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REPORT ON THE IMPACT OF THE 1983 SEXUAL ASSAULT LEGISLATION IN WINNIPEG, MANITOBA

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The views expressed herein are solely those of the author
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EXECUTIVE SUMMARY

Introduction

1. This report is a synthesis of research conducted in Winnipeg, Manitoba, from January, 1987, to February, 1988, as part of a national study evaluating Bill C-127 -- "An Act to Amend the Criminal Code in Relation to Sexual Offences and other Offences Against the Person." The study, contracted by the Department of Justice, was done in six Canadian cities (Vancouver, Lethbridge, Winnipeg, Hamilton, Montreal and Fredericton).

2. A process investigation was combined with an outcome evaluation to detect any evidence of changes in attitudes, bureaucratic practices, etc. as the legislation began to take effect. The outcome evaluation was based on the two years prior to the January, 1983 amendments (1981-82) and the two years afterwards (1984-85).

3. The evaluation findings are based on data gathered from police files, files from the sexual assault centre, court monitoring, and interviews with key informants (police, prosecutors, defence lawyers, judges, workers at the sexual assault centre, physicians and victims).

Main Findings

- In both time periods, most complainants reporting offences to the police were female. The percentage of male complainants remained constant in the post reform period.
- Almost all the accused in both time periods were male.
- Juveniles were less than 18 per cent of the accused in each time period.
- There were substantially more child complainants in the post reform period.
- Significantly more of the post reform assaults involved parents or others known to the complainant.
- More complainants who were prostitutes appeared in the post reform period than in the prereform period.
- One of the cases in the court monitoring sample was that of a husband charged with sexually assaulting his wife. The defendant was convicted and received a jail term.

- The proportion of complainants who reported being assaulted by strangers decreased in the post reform period. Although this difference partly reflects the increased number of child sexual assault cases reported to police since 1983, even for adult complainants there were fewer strangers in the post reform period.

- More complainants in the post reform period reported assaults that were not of a stereotypical nature (e.g., violent assault by strangers) and more of these cases are being processed through the courts.

- Offences typically occurred in the home of the accused or the complainant, although more assaults occurred in a public place in the earlier time period.

- Cases involving intercourse decreased in the post reform period, while touching, fondling and grabbing rose during this period.

- More reports were classified by the police as "founded" in the post reform period. This was true for both the police and sexual assault centre records.

- Physical force was reported less often in the post reform period and a smaller percentage of complainants were injured in that group. More complainants in the post reform period sought medical attention. The most common form of physical force used was grabbing and restraining.

- The total filtering out of reports at the police/crown prosecution/court levels accounted for the termination of 87.3 per cent of cases in the prereform period and 70.9 per cent in the post reform period.

- Statistical outcome testing evaluated the influences on charging, conviction, and sentencing. In general, the probabilities of charging and conviction changed only slightly between prereform and post reform periods. Length of incarceration showed no significant differences between the two time periods.

- Most key informants favoured Bill C-127 and consider it a substantial improvement over previous rape legislation.

- According to the majority of respondents, the most important differences between the old law of rape and the new one of sexual assault pertain to the elimination of the requirements of corroboration, recent complaint, and penetration. It was felt that many "less serious" cases are being prosecuted.

- Some policies implemented to deal with sexual assault cases have resulted from an increased awareness by the public and not from the legislation itself.

- Personnel dealing with sexual assault victims believe that victims' experience on the witness stand has improved since the sexual assault law was passed, particularly because of limitations on questions pertaining to complainants' past sexual history.

- In the monitored trials, complainants were generally not questioned about their previous sexual behaviour; when defence counsel attempted to pursue this line of questioning, the crown attorney and judge intervened.

- Specialization by police, crown attorneys and medical personnel was strongly advocated by most key informants.

- Almost all victims interviewed felt they had been treated fairly by the criminal justice system and said they would recommend reporting sexual assaults to the police.

Conclusions

- Although it appears that the attrition rate decreased considerably in the post reform period, similar research conducted in Winnipeg before the law reform resulted in almost identical rates. Our findings in Lethbridge also showed there was little difference in the attrition rate between the prereform and post reform periods. The Lethbridge study resulted in the filtering out of 76 per cent and 75.2 per cent of cases respectively. These findings suggest that the 12.7 per cent conviction rate found in the prereform Winnipeg sample is atypical, and not consistent with that found in other studies.

- The interviews and court monitoring data provide evidence that Bill C-127 has had a positive impact on the processing of sexual assaults. Although many of the changes are subtle and attitudes have not been consistently altered, the above evidence indicates that the law has made a difference.

- The police and crown attorneys feel considerable public pressure to take sexual assault cases seriously, and it appears that they are doing so. Many judges are also becoming more sensitive towards victims.

- Although more cases have been processed because of Bill C-127 and the manner with which cases are dealt with has improved, elements such as "corroboration" and "recent complaint" are still important in obtaining convictions. Trials and interviews also show that some former attitudes and practices still exist.

- Victims' trauma can be minimized by reducing the amount of time complainants wait for a court appearance. The right of the defence to use a variety of delay tactics is not consistent with the complainant's need of a speedy hearing.

- The elimination of preliminary hearings in sexual assault cases would eliminate long delays as well. Defence lawyers typically try to find discrepancies between testimony at the preliminary hearing and trial in order to discredit witnesses. The differences are often trivial and result from the time lapse, not dishonesty.

- While Bill C-127 is an acknowledgment of womens' right to be autonomous and self-determining, consistent affirmation of these rights cannot be guaranteed solely by legislation. Bill C-127 does, however, provide the framework that both allows and validates social change. To this extent, the first step has been taken.

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1.0 INTRODUCTION

1.1 Background

Over the past two decades many groups have criticized the legal/judicial treatment of sexual offences. These concerns centered around the degradation of victims and, since most victims have been female, the apparent institutionalized denial of women's rights under the law. Particular problems with the law included the definition of rape as a crime that could only be perpetrated upon women and yet could not apply to a spouse, the treatment of victims by the criminal justice system (which sometimes seemed more concerned with complainants' credibility than with offenders' guilt), and the application of unique procedural and evidentiary standards to sexual offences.

Bill C-127 -- "An Act to Amend the Criminal Code in Relation to Sexual Offences and other Offences Against the Person" -- proclaimed on January 4, 1983, represents a comprehensive response to these and other concerns with the rape law. Included in this new legislation were significant changes such as:

- reclassification of the crime of "rape" to three levels of sexual assault (based on aggravating factors);
- guidelines regarding evidence required for a conviction;
- disqualification of evidence on the complainant's background that is not pertinent to the case;
- clearer identification of which groups are protected and which are liable;
- specifics on sentencing;
- important modification of the rules of evidence.

The federal Department of Justice commissioned studies in six Canadian cities (Vancouver, Lethbridge, Winnipeg, Hamilton, Montreal,and Fredericton) to evaluate the impact of this major legislation. This report presents the findings for Winnipeg, Manitoba.

1.2 Study issues

The study issues according to the terms of reference laid down by the Department of Justice were as follows:

- to describe how reported sexual offences are processed through the various levels of the criminal justice system, including outcomes of cases.
- to determine whether the law has had an impact on the volume and types of cases, as well as on attributes of victims and offenders.
- to examine the impact of the law reform on criminal justice practitioners and others working with victims of sexual assault with regard to practices, procedures, and attitudes.
- to describe the nature of the sexual assault victim's experiences within the criminal justice system and other agencies.
- to discover any unintended consequences of the law reform on victims and on the criminal justice system.

1.3 Organization of the report

This report on a detailed review of the criminal justice system in Winnipeg, Manitoba, is divided into eight sections and includes a review (Section 2) of the literature providing the background and rationale for the changes to the Criminal Code as well as salient features of the legislation. This provides a basis for the design of the evaluation, reviewed in the third section. We also review the data quality and the basis for evaluating whether the new legislation has the intended outcomes. The fourth section describes the response to reports of sexual assault incidents and the fifth looks at the impact of Bill C-127 on practices, outcomes and attitudes. The sixth section describes the nature of the victim's experience with the criminal justice system, the seventh outlines problems and improvements suggested by practitioners, and the final section provides a summary of findings.

2.0 LITERATURE REVIEW

2.1 Introduction

The rape law as it existed prior to 1983 appeared to demonstrate an inherent distrust of rape victims. The adversarial nature of the trial process, with the concomitant uncertainty of one person's word against another, has had implications for sexual assault cases. The system sometimes seemed to show more concern over complainant's credibility than the culpability of the accused. The majority of reported offences have adhered to very specific stereotypes, perpetuating the definitions traditionally applied to "real" or "classic" rape: that of the sudden attack by a stranger appearing out of the bushes. Numerous studies done over the past decade show that the most commonly committed sexual assaults do not fit the stereotype (See Amir, 1971; Bart, 1975; Finkelhor, 1979). Indeed, the "classic" offence is really the anomalous one.

Most assaults are found to take place between people who know each other and in many cases are intimates and family members. Yet, relative to stereotypical offences, they have had lower reporting rates. Victims find it difficult to define friends and family members as rapists. This fact, exacerbated by guilt victims feel as a result of cultural assumptions surrounding rape, has kept these more common assaults inconspicuous and out of official statistics. Victims have absorbed the blame for these "everyday" assaults. This has helped maintain society's belief that the "classic" assault is the only real offence and that women themselves have provoked other assaults. A study by Gunn in 1982-83 demonstrated that victims themselves internalized the socially acceptable standards of evaluating sexual offences and typically reported offences they deemed "appropriate".[1] These offences included factors such as attack by a stranger, visible injuries, and blaming the assailant. These circumstances reflect cultural assumptions that are more readily perceived as authentic by others as well as the victim.

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[1] See also Kinnon (1981), Brickman and Briere (1984) and Bart and O'Brien, 1985) for research on the under-reporting of sexual assaults.

Many critics of the justice system argued that the previous legislation, coupled with prevailing societal attitudes, produced three important effects. First, many sexual assaults went unreported. Second, cases were "filtered" from the system.[2] Third (as Clark and Lewis (1977) discovered), although the Criminal Code provided severe penalties for rape, sentencing did not reflect the serious nature of the offence in the relatively few convictions obtained.

The new sexual assault law attempts to redress aspects of legal procedure recognized as discriminatory towards women.

2.2 Sexual assault provisions of Bill C-127

2.2.1 Designation of offence

The most obvious change is that of the designation of the offence. The former offences of rape, attempted rape, and indecent assault on a female or male have been replaced by three levels of sexual assault. This change removes the emphasis on penetration, which had made rape a gender-specific offence, and provides a more universal definition encompassing assaults perpetrated against males as well as females.

Because of the myths associated with rape and the inference that a victim must have done something to bring on the assault, women rape victims have been stigmatized. The shift in emphasis from a sexual (rape) to assaultive (sexual assault) offence is an attempt to remove the cultural stigma associated with the former designation and thereby encourage reporting.

Bill C-127 designates the following under Sexual Assault:

246.1(1) Sexual Assault;
246.2(2) Sexual Assault
    (a) With A Weapon;
    (b) Sexual Assault--Threats To A Third Party;
    (c) Sexual Assaults Causing Bodily Harm;
    (d) Sexual Assault--Party To The Offence; and,
246.3 Aggravated Sexual Assault.

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[2] See Minch (1984) and Gunn and Minch (1988) for a description of this filtering process.

2.2.2 Spousal immunity

In addition to removing gender from the offence, the law reform also deals with spousal immunity to prosecution for sexual offences. Prior to the law reform, husbands could not be charged with raping their wives. This served to sustain the historical concept of male ownership of their wives and preserve the "ideal" of the nuclear family at all costs.[3] A focus on the assaultive aspect of the offence confronts the issue of conjugal obligation and allows for the protection of persons, regardless of relationship to the offender. Now, according to law, marriage will no longer protect a spouse against being charged with committing a sexual offence.

> **Bill C-127 section 246.8 states that a husband or wife may be charged with an offence whether or not the spouses were living together at the time of the alleged incident.**

2.2.3 Corroboration

The former law required corroborative evidence, such as a witness to the actual offence or to a display of extreme distress exhibited by the victim immediately following an offence, or cuts, bruises, torn clothing, etc. to substantiate a victim's complaint of being sexually assaulted. Injury to complainants served not only as evidence of an illegal act, but also as an indicator in defining an assault according to the social stereotype. This requirement supported the assumption that a crime of violence must be accompanied by injuries and failed to acknowledge the many potential circumstances of a sexual assault that might not result in the necessary visible evidence. For example, the use of psychological power, fear and threat of force can elicit compliance from victims without the use of overt violence. Victims' responses may also differ, depending on individual characteristics and circumstances of the assault. It is unreasonable to assume that all victims who have undergone a traumatic event will respond in a consistent way, according to some socially defined standard. The new law supports the logic of a differential response and, as well, the possibility of such an offence occurring without any observable effects. Hence, the absence of such evidence no longer precludes a conviction.

> **Bill C-127 section 246.4 states that corroboration is not required for a conviction on charges of incest, gross indecency, or any of the new sexual assault offences and the judge shall not instruct the jury that it is unsafe to find the accused guilty in absence of corroboration.**

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[3] See Brownmiller (1975) and Clark and Lewis (1977) for a discussion on the historical concept of females as the property of males.

2.2.4 Recent complaint

Rules relating to the matter of recent complaint have been repealed. Formerly it was believed that a victim suffering a genuine sexual assault would complain to someone at the first opportunity. The presumption of an immediate response failed to consider the impact a sexual assault may have on some victims. This practice ignored factors such as embarrassment, ambivalent feelings about reporting a family member or significant other, fear of reprisal, or sheer confusion as causes for a delay in responding. Now, offences which could not be prosecuted because of the time lapse can be heard and delay in reporting cannot be a defence in the case.

> **Bill C-127 section 246.5 states that the rules relating to evidence of recent complaint in sexual assault cases are hereby abrogated.**

2.2.5 Previous sexual conduct and reputation

Questioning complainants as to their sexual past has always existed in some form under sexual offences legislation. Expectations of appropriate behaviour for women were most clearly demonstrated since such questioning was used mainly to show whether a complainant appeared culpable in some way for falling prey to an accused. The issue was often not whether the "act" took place, but whether the complainant in some way provoked it. Credibility was often contingent on strict standards of morality imposed upon women. For example, respectable women were subject to censure for being sexually active. It was only acceptable for a woman to engage in sex within marriage. If a sexual assault occurred in the context of a social situation -- hitchhiking, or even walking alone at night -- a woman was often considered "fair game." Yet men were not subject to the same stringent restrictions and, when accused of sexual assault, were perceived as responding normally to provocative behaviour. If a woman had engaged in sexual activity with others in the past, she was perceived as promiscuous and could be questioned about her prior experiences in detail by the defence. The new law has set out parameters by which judges can ascertain the validity of such questioning. This change appears to be a growing recognition of the individual's integrity and the inacceptability of providing legal support for double standards of morality for males and females.

> **Bill C-127 section 246.6 (1) states that evidence relating to the complainant's previous sexual conduct with a person other than the accused will not be allowed unless: (1) it rebuts evidence previously introduced by the prosecution, (2) it is evidence of specific instances that establish someone else as the perpetrator of the crime, or (3) it is evidence of sexual activity that took place on the same occasion as the alleged incident, where it relates to the consent that the accused alleges he believed was given by the complainant.**

> **Bill C-127 section 246.7 states that evidence of sexual reputation, whether general or specific, is not admissible for the purpose of challenging or supporting the credibility of the complainant.**

2.2.6 Consent

There has been a tendency for perpetrators to be favoured in determining "benefit of doubt" when the defence of mistaken but "honest belief as to consent" was applied. This simply means that an accused would not deny that the sexual act took place, but indicated reason to believe the complainant consented to the act. Such a belief by the accused, whether or not the belief is correct, removes the intent to commit a crime. This defence has been severely criticized because the onus has been on the complainant to prove there was no cause given for the mistake because it tends to mitigate the perpetrator's responsibility. In the same light as victim credibility, the issue of mistaken belief of consent is partially dealt with by clarifying the test of consent and of the factors that invalidate consent as a defence, so that the judge may instruct the jury accordingly. Therefore, a defence of belief in consent must be based on reasonable evidential grounds. Encouraging the acceptance of responsibility for one's own actions might serve to diminish the tendency to blame the victim.

> **Bill C-127 states that no consent is obtained where the complainant submits or does not resist by reason of (a) the application of force to the complainant or to a person other than the complainant; (b) threats or fear of the application of force to the complainant or to a person other than the complainant; (c) fraud; or (d) the exercise of authority.**

2.2.7 Provisions for sentencing

The penalty associated with (246.1) sexual assault is imprisonment for up to 10 years if the prosecution chooses to proceed by way of indictment; if the charge is proceeded with by way of summary conviction, the maximum sentence is 6 months. For 246.2a, 2b, 2c, and 2d -- sexual assault with a weapon, threats to a third party, causing bodily harm, or party to the offence -- the penalty is imprisonment for up to 14 years; for aggravated sexual assault, it is up to life.

2.3 Summary of substantive, evidentiary and procedural changes in Bill C-127

Bill C-127 made important changes in three major aspects of processing criminal cases relating to sexual assault. First, the offence of rape has been altered to three levels of sexual assault. By placing sexual offences into the general category of assault, the emphasis is on the assaultive nature of the crime. Hence, the stigma associated with a sexual offence is lessened and victims encouraged to report the assault. A second substantive change is to make sexual assault gender neutral. Although the overwhelming number of victims of sexual assaults are women, this revision may encourage reporting by victimized men (many of whom are young) and encourage a general shift in societal attitudes to sexual assault. This also assists in emphasizing the assaultive rather than the sexual aspect of the offence. Third, by removing spousal immunity from prosecution from the Criminal Code, sexual assault in marriage is recognized as an offence.

Second, the rules of evidence are considerably changed, resulting in some procedural changes. For example, sexual reputation may not be used as a defence to challenge the complainant's credibility and in only three specific instances can mention of prior sexual activity with anyone but the accused be introduced. This means that defence lawyers are now severely limited in introducing evidence of the complainant's prior sexual activity. In addition, under the old legislation, the practice was to not proceed with complaints that were not immediate. The new legislation removes this discretion and directs the courts to treat all complaints on an equal temporal footing. Another evidentiary shift is that corroborative evidence is not required. The judge, therefore, is no longer required to instruct the jury that it is unsafe to convict in the absence of such evidence. Since sexual assaults usually have no witnesses, this change is an important alteration to the evidence required to convict. Finally, honest though unreasonable belief in consent is still a defence, but the judge is obliged to instruct the jury as to the reasonableness of that belief. This tends to shift the onus of proof from the victim and encourage the recognition of responsibility for one's own actions.

2.4 Objectives

With this background it is now possible to identify the basic objectives of Bill C-127. They are:

- to reduce or prevent "secondary victimization" of the victim resulting from her (or his) involvement in the criminal justice system;

- to extend legal protection to a wider range of Canadians and to enhance their protection from a wider range of nonconsensual sexual offences;

- to encourage reporting and affect founding and conviction rates for sexual offences.

To achieve these objectives, Bill C-127 must be interpreted and implemented by the criminal justice system. The legislation can provide direction, specify procedures and set limits on evidence, but the criminal justice system has many opportunities for individuals and institutions to apply discretion. Coupled with the legislation must be a shift in general societal attitudes to ensure that the intent is fulfilled. However, if it is seen that the main actors in the criminal justice system (police, prosecutors, defence counsel, judges and juries) do interpret the new legislation appropriately, victims may be willing to proceed with complaints that otherwise might not have been reported. With a higher complaint rate and a more humane criminal justice process leading to lower attrition of cases, the conviction rate should rise.

2.5 Recent research relating to the study

Several studies have assessed the impact of rape reform legislation, among them studies done in Michigan (Marsh, et.al., 1982); Washington (Loh, 1981); Nebraska (Gilchrist and Horney, 1980); California (Polk, 1985; LeBeau, 1987); and a recent study looking at six jurisdictions (Horney and Spohn, 1987).

The legislative changes evaluated in these studies were similar to the changes made in Canada, though the Canadian reforms were broader than those in most states. The effects reported in the United States were modest at best. The only changes of any magnitude were found in California and Michigan.

In his study using 1971-1975 data from San Diego, LeBeau looked at the impact of rape law reform on the reporting of rapes to police. In 1974, California restricted testimony on the victim's previous sexual history, prohibited the use of the term "unchaste character" to describe a rape victim in court, and prohibited any inference that the victim's prior sexual conduct had any bearing on her credibility. In measuring the effect of these changes, LeBeau looked at both the number of rapes reported to the police and at the characteristics of reported cases. He hypothesized that if the law did have an impact on reporting it would increase the number of cases reported and the proportion of reported cases that did not conform to the pattern of "classic rape." In support of these hypotheses, LeBeau found that there was a substantial increase in the total number of reported rapes in 1975 (though there had also been a similar increase in 1974). He also found that there was a higher proportion of "nonclassic" assaults: more non-stranger rapes were reported; more white victims reported intra-racial rapes; and more rapes were reported by victims who did not receive physical injuries. Polk's subsequent work in California found no change in clearance or conviction rates and a slight increase in rates of incarceration.

While the number of reported rapes increased in San Diego, they did not increase in Michigan (Marsh, et.al., 1982) though Michigan's reform was more comprehensive than California's. However, the Michigan study showed an increase in both arrests and convictions for rape. Criminal justice officials in Michigan felt that the prosecutor's chances of winning a rape case were increased by the restrictions on testimony about the victim's prior sexual conduct. These officials also felt that the victim's experience was not as unpleasant because of the new law.

The study carried out by Horney and Spohn is worthy of note because it avoids some of the limitations of the earlier work. First, their study looked at rape law reform in six different states so comparative analysis among states with different degrees of reform is possible. Legislative change ranged from reforms enacted in Michigan and Illinois similar in scope to those enacted in Canada, to Georgia and Washington, D.C., which have enacted some evidentiary changes relating to corroboration and prior sexual history but which both require genital penetration and some evidence of resistance. Second, their study used a time series analysis of 15 years in order to show long-term trend data. Third, the effects of "history"[4] on the dependent variables can be controlled to some extent by the fact that different jurisdictions had different intervention points (different dates of legislative change), while environmental factors such as concern for rape victims are likely to be relatively constant from one jurisdiction to another.

Horney and Spohn have done a time-series analysis using the date of legal change as the independent variable and offences reported to the police, number of indictments and number of convictions as dependent variables. While the analysis is not yet complete, preliminary analysis of four of the six jurisdictions has shown that the only significant effect of the legal changes is an increased number of indictments in Chicago, a city in a state that had one of the most comprehensive legal changes. They hypothesize that effects will be greatest in jurisdictions with the strongest reforms, suggesting that Bill C-127 may have some measurable impact. They also suggest that legal changes will affect indictments and convictions more than offences reported to the police, since the changes are better-known among the legal community than members of the public.

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[4] In assessing the impact of legislative change, we can seldom run a properly-controlled experiment having a comparison or control group in which there is no change to compare with the experimental group receiving the intervention. This makes it impossible to attribute any effects solely to the legal change, since the effects may have been caused by other changes in the environment. For example, any changes we might attribute to legal reform might also result from environmental factors such as changing public attitudes and/or successful lobbying and educational work by feminist groups.

3.0 DESIGN OF THE EVALUATION

3.1 Introduction: Evaluating legislation

Law is a reflection of society and therefore usually reflects current norms. Law provides the context in which to assess and sanction deviations from generally accepted norms. It may occasionally also be a creative force, itself producing changes in the social order. Existing customs, norms, and practices that have become institutionalized in the culture are difficult to legislate away.

Using law as an instrument of social change could be seen to involve two processes. The first is institutionalization, the establishment of a rule and provisions for its enforcement in order to ensure compliance. Sanctions must be seen to be imposed for breaking the rule. The second is internalization, the process whereby members of society adopt the values implicit in the law. People come to believe in the rightness of the law and obey it, not because they are forced to but rather because they want to and feel it is right to so do.

Institutionalization is relevant to the initial stages of changing peoples' behaviour and hence the social order. With a new law the initial stages are often characterized by forced compliance. At the same time, implementation of law is not guaranteed simply by passing it. Legal reform is gradual as it passes through the courts for interpretation and grounding in established precedents.

Internalization, on the other hand, occurs after law has been established and enforced for a period of time. As law becomes internalized there is a shift from forced to voluntary compliance. Laws aimed at changing the status quo are really attempting to prevent or extinguish customary behaviour. As reality is socially created and reflects accepted patterns of behaviour in mainstream society, there is considerable relearning and readjustment that must go on during this period.

There is, at the same time, another important component to the process. The impetus for legal reform is not derived from a vacuum. It must come from social awareness and an active desire for change. Therefore laws and practices are challenged prior to institutionalization and internalization. Reform of the sexual assault laws has been a response to an active women's network protesting violence towards women. As public awareness has increased, so has the outcry of victims against systemic discrimination within the legal/judicial institutions.

Whether an established practice can be changed by law depends in part on the nature of the practice. Its significance, visibility, and extent of popular support are all important elements to consider. For example, violence against women has been tolerated for generations and yet has only become socially significant as a result of a dramatic increase in awareness of the extent to which women have been violated. Rape studies, motivated by a growing social consciousness, exposed a serious problem to counter official statistics that had been grossly deficient as a measure of incidence. The women's movement has been instrumental in demonstrating the unacceptability of violence and sexism and lobbying efforts have resulted in various mechanisms intended to change the conditions that cause the violence.

Because policy or programs are sometimes not discrete, evaluations are also not discrete. In such instances evaluations are a complex series of small evaluations, each marshalling evidence within a framework to arrive at a final judgment about the program's worth. Although it may appear otherwise, legislation is not a discrete event; it, too, is a process evolving over a period of time and involving decisions taken at several levels. As discussed above, legislation is frequently implemented in response to public pressure and the sexual assault legislation arose in response to the efforts of women's groups to expose and reduce the incidence of sexual assault. In addition to changes in criminal justice practices (e.g. processing, prosecution), the law is usually intended to address a number of aspects of social problems comprising:

- changed offender behaviour through social control including threat, direct control of offenders, rehabilitation, and monitoring (probation);
- changed treatment of victims through encouragement of reporting, compensation, post-event treatment and support (including legal/judicial support);
- changed public awareness and understanding of the crime and its broad social consequences.

These objectives are frequently embedded deep in the legislation and also may be present to varying degrees in different laws. Legislation, often introduced or revised in response to societal pressure, is usually the result of compromise. Therefore, it is not surprising that distilling specific objectives from the legislation can be difficult. In addition, legislation rarely is able to present isolated objectives. For example, rehabilitation of the offender may be attenuated by the need to control through threat of punishment and the heightened awareness of the impact of the crime on the victim.

Legislation never occurs without social impetus. As a major intervention into social processes, it arises in response to a perceived need, is introduced and amended in the public domain and is implemented over a period of time as both the general and key publics[5] learn of the changed social environment.

Parliament's enactment of the sexual assault legislation was expected to encourage victims to report, improve conditions for them in the criminal justice process, and improve their status in the eyes of the law. It was also expected to facilitate successful prosecutions and increase the certainty of conviction. In other words, the law was enacted to promote social/legal change -- a change designed to alter attitudes towards sexual assault, to make the law a more effective instrument to deal with sexual offences, and to make the system more responsive to victims.

This discussion leads to two main conclusions. First, any outcome measurement in the form of higher conviction rates or more reporting faces several hurdles:

- Since the true level of sexual assaults is unknown (and unknowable), estimating whether there is more reporting as a result of the legislation is not possible. A reasonable proxy approach might be to simply track the number of reports under the assumption that, if reporting rates increase, this is the result of victims perceiving a better system and not because the incidence of sexual assault has increased.

- Considerable time must pass to assess such a change. Many of the attitudes of key actors in the criminal justice system may not change quickly and it is probable that major effects, if they exist, would not be discernable for a decade.

Second, a process evaluation approach is indicated. This implies an evaluation founded on extensive qualitative information in the form of perceptions of major actors in the system (including victims). In addition, detailed review of administrative data is indicated to evaluate the extent of the filtering out of cases, to identify the stage at which this is occurring and to track complainants from initial report through to conviction.

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[5] The term "key publics" is crucial, for research in any program requires identification of central decision-makers and actors upon whose cooperation the legislation (and its evaluation) depend.

3.2 Methodology

3.2.1 Overview

Evaluation implies comparison. The classic paradigm involves the experiment where a controlled intervention is introduced into a closed system with a view to altering a specific attribute or outcome. In this model, depending on the degree of control over other environmental factors and the problems in measuring the intervention and outcome, it may be possible to unambiguously attribute a change in outcome to the intervention.

In social research, pure experimentation is rarely possible. At times, psychological experimentation (such as sensory deprivation) strives toward the pure experiment, but the subject can never be controlled completely. The result is that the paradigm for attributing cause-and-effect is termed "quasi-experimental" design.

3.2.2 Evaluation research: Outcome versus process

The quasi-experimental framework is designed to provide a clear answer to the question "has the program made a difference?" This is the core of the evaluation question, but measuring quantitative outcomes alone can prejudice a proper conclusion. Summative or outcome evaluation, which attributes changes as a result of an intervention, is often incomplete and process or formative evaluation, in which policy administration and implementation are the core issues, is required for the final assessment.

Often outcomes can be perverse in that the intervention may apparently have worsened the situation. Because social interventions, especially legislation, are complex in their impact, they initially may appear adverse, especially when measured using limited definitions of the outcome. However, the evaluation, if constructed as a process investigation, may produce evidence that change in attitudes, bureaucratic practices, etc. has occurred that may eventually produce positive change in the outcome. For evaluations of complex interventions, where the impact is expected to unfold over time, a process orientation is usually mandatory.

Process evaluations are also required to ensure that unintended outcomes are identified. Analyzing the process of implementing interventions and dissecting the attitudes and behaviours of individuals and institutions involved in the intervention is essential to the identification of unintended outcomes.

Since social policy sometimes results in perverse reactions (for example, a successful crime prevention program may actually appear to worsen the incidence of crime by encouraging more complete reporting), it is essential that the policy process be examined. For this, it is essential that process of the policy change be identified and charted. In Figure 1 a typical policy that has a number of links is shown.

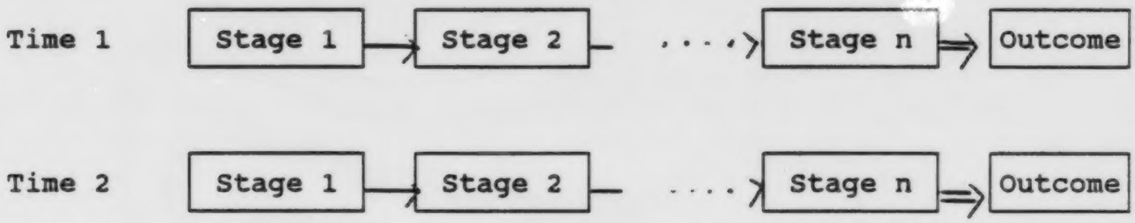

Figure 1

As the result of a change, outcomes intended to be modified (say reduction in adverse incidence) are increased. Simply comparing the outcomes across the two time periods (number of crimes) may reflect poorly on the policy change.. However, this reduction may be an artifact revealed when the process is explored. Therefore, evaluation research may reveal the increased reporting and identify a number of positive changes that have occurred, frequently in the attitudes of key professionals and "gatekeepers." This may lead the evaluators to conclude that in due course the desired change may be expected.

3.2.3 Evaluating legislation

Legislative change is usually an important intervention arising out of a period of dialogue and debate. It also usually requires a period of learning and implementation that delays its full impact.[6]

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[6] The delay may also be due to resistance from key groups required to introduce and enforce the legislation.

Legislation acts at several levels. First, it acts directly to regulate offenders and victims and the relationship between the two (by changing the definition of what constitutes a crime). Second, it acts to communicate social control information back to the general public. Third, it regulates activity after the offence through punishment, rehabilitation and compensation (financial and emotional).

Changes in legislation do not fall neatly into the quasi-experimental model. Interventions are complex, never localized at a point in time (and probably are regionally variable in terms of interpretation and process). These interventions frequently have diffuse objectives with multiple outcomes, operate in complex and frequently politically charged environments and have impacts that may at first appear negative.

Consider, in figure 2, a typical element of sexual assault reporting -- disposition "process."

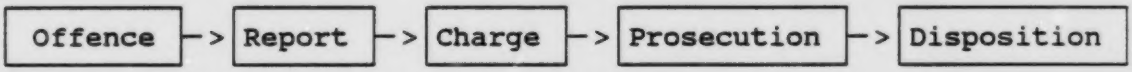

Figure 2

One of the intended outcomes of Bill C-127 is to ensure that offences result in dispositions. It may be that the legislation has actually reduced the overall number of convictions, or reduced the convictions/offence ratio, or the convictions/report ratio. A simple outcome evaluation could easily dismiss the effectiveness of the legislation if, as a result of the introduction, links in the translation of offence to disposition had actually worsened. This worsening might be an unintended consequence of the legislation or the effect of an intervening variable.

A process evaluation examines each link, through attitudinal data and by case tracking, to establish whether the overall process of reporting to disposition has deteriorated, whether some individual links have improved while others have worsened, or whether there are unintended effects. In this way the evaluation becomes constructive and reduces the possibility that useful changes are not dismissed prematurely.

For example, if the results indicated an increase in acquittals, it could not be deduced that the law is ineffective as a means of convicting offenders. This finding would have to be interpreted within the context of procedural changes within the criminal justice system and consideration of increased numbers of cases proceeding through the system. It is quite possible that if all factors were identified, the seemingly negative change might prove to have positive attributes fulfilling the intent of the legislation.

The enactment of Bill C-127 denotes an intervention that is presumed to have an impact on victims of sexual assault and justice system personnel. Has social/legal change been promoted by this change in law? In order to fully address this question, the impact, if any, must be evaluated. The following discussion outlines the design of evaluating the impact of Bill C-127.

3.3 Evaluation Plan for Bill C-127

3.3.1 Overview

A simple, pre-test, post-test, quasi-experimental design was used in which data (interviews with key actors in the criminal justice system, administrative files for all levels in the criminal justice system) were collected for two years prior to the enactment of the legislation and two years after.[7] This was complemented by a process evaluation of the translation of offences to dispositions before and after the legislation. Observations for the pre-test involved data for 1981 and 1982. Since the sexual assault legislation was enacted in 1983, the data for this year were excluded to allow for the transition process and familiarization that must be considered when any new piece of legislation is put into practice. Observations for the post-test involved data for 1984 and 1985.

Assessment of the legislation's impact consisted of a number of different studies. All cases of sexual assault reported to the police for 1981 and 1982 were compared to those reported for 1984 and 1985. Sexual assault cases were followed through the system to the prosecution and court levels to analyze any differences in the filtering process between the two test periods. To supplement the criminal justice system data, files from the Winnipeg Sexual Assault Centre were also reviewed. In addition, court monitoring, interviews with key informants (police, prosecutors, defence lawyers, physicians, sexual assault counsellors, and victims) have provided descriptive information for a more balanced view of the effects of legislative reform. During the time that cases were followed through the courts, the daily Winnipeg newspapers was monitored to examine the manner in which they were being reported.

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[7] Section 3.5 below contains a detailed review of data sources.

Because of the scope of the legislative reform and because it is not possible to control for external events that might affect our dependent variables, clear inferences cannot be made from any of the sub-studies. However, the use of multiple methods and multiple data sets does increase the likelihood that our conclusions are valid.

3.3.2 Internal and external validity as it applies to Bill C-127

Internal validity refers to the extent to which conclusions drawn from evaluation results accurately reflect the impact of the intervention being evaluated. In estimating internal validity, the researcher critically and systematically assesses how several factors may influence the findings. Because of the nature of this design, the most obvious weakness is the threat to internal validity posed by the prolonged process of debate and implementation involved in all major legislation. It is possible that even during 1981 and 1982 the effects of the impending legislation were already being felt. For instance, the development of outreach programs, providing an educational function to assist assault victims, may have contributed to some effects that are only now being discovered. These programs, a result of the women's movement, cannot be completely controlled in the research design. These and other factors that might affect the reporting and processing of sexual assault cases must be considered when conclusions about the impact of the legislation are drawn. In the interview phase of the study, key actors in the criminal justice system were asked if they were aware of factors other than the legislative change that might have an impact on the way in which sexual assault cases are reported and processed.

External validity refers to whether research findings can be generalized. Estimating external validity is a process in which the researcher considers how the generality or representativeness of a finding is threatened by effects from events over which he or she may have limited control, such as reactivity. More specifically, if key actors such as judges, defence lawyers, crown attorneys, etc. are aware that they are being monitored in the courtroom setting, they may perform in atypical fashion, reverting back to typical behaviour when they are no longer being observed (Hawthorne effect). Another concern of external validity is selection-treatment interaction effect. This emphasis on this evaluation was on reported cases of sexual assault, making it difficult to generalize findings to victims who have not reported. Issues of validity were addressed by using multiple measurement to ensure that basic concepts were captured. Finally, the whole study used six sites to increase the generalization of the results to Canada as a whole.

To ensure that all stages of the legislative, enforcement and judicial systems were identified and evaluated, key informants were asked about the process before and after the legislation. This approach ensured that each link in the criminal justice system was examined to provide policy feedback on the implementation of the legislation. It is likely that the process evaluation of the legislation was the most important task in revealing its contribution as well as identifying specific links requiring additional support and attention.

3.4 Data Sources

3.4.1 File data

For this evaluation, information was extracted from police records, crown files, court documents, and files from the sexual assault centre. The study period consisted of the two years prior to the enactment of Bill C-127 (1981-82) and two years afterwards (1984-85). The two study periods were compared to analyze the extent to which any changes occurred that might be attributed to implementing the sexual assault legislation (for example, whether the law reform has encouraged complaints from spouses, men, prostitutes, or other persons affected by the changes and, if so, whether they have successfully brought charges, and what procedural changes have been implemented to deal with former requirements concerning corroboration and recent complaint.

Records prepared for organizational purposes sometimes did not include variables of interest to the evaluation. Further, the researchers had no control over the quality of the information recorded. This problem is compounded over time when procedural changes may alter the way events are reported. Additionally, organizational personnel may change, leading to alterations in recording procedures over time. Because of these factors, apparent changes in outcome may actually reflect factors in organizational reporting or recording procedures. Similarly, real change in outcome may be concealed by such bookkeeping changes.

At the same time, although records can reflect biases of the organization or of the persons preparing the records, this can actually be a source of data that permits additional insight into personal attitudes and perceptions. For example, police perception of the complainant's credibility may be based on their judgment of the person's character and may affect their decision to "found" a complaint. One way to evaluate the legislation's impact is to compare the processing of pre- and post reform cases in which doubt was cast on the complainant's character in order to determine whether this factor made a difference in "founding", charging, prosecuting, and convicting.

a. Police files

The Winnipeg Police Department has six divisions, with records stored centrally at the Bureau of Police Records in District One (the main branch), located in the Public Safety Building. The Crime Division of District One has 18 detectives (street personnel) out of a total 25 officers. The remaining officers are supervisory. The other five divisions are located in surrounding districts, and each has between five and eight detectives and a supervisor. The child abuse unit, which deals mainly with intra-familial cases of sexual abuse, is also located at the Public Safety Building. It is responsible for handling most complaints from children under 18 years of age.[8] The unit has six street personnel and two supervisors. Although separate files are kept in the child abuse unit, the Bureau of Police Records also has files for these cases merged with those for all other sexual offences.

Typically a complaint goes to the district in which it occurred and uniformed police take the initial report. In some instances the same officers will handle the case, while in others it will be transferred to a team of detectives. If a suspect lives in a different district, the case may be transferred or assistance sought from that division. District One may be asked for assistance in investigating some of the more serious, or serial cases.

Police reports signify the first official stage of a sexual assault complaint. At this level a case is deemed to be "founded" or "unfounded." A classification of "unfounded" suggests that the officer receiving the complaint does not believe the complainant. This may be due to lack of evidence or other factors that are often discretionary (e.g., officer believed that the complainant was too intoxicated to recall details; there were contradictions in the complaint; complainant has a history of unfounded complaints). However, a case for which there is no obtainable evidence may receive a designation as "founded", in spite of the unlikelihood of prosecution. The officers handling the complaint decide whether they think the complaint is credible and thus founded. Charging also occurs at this level, although advice may be sought from the crown attorney on the advisability of proceeding with a case.

The data collection instrument was divided into three sections: police, crown prosecution, and court. The first section was used to record information about the initial report and manner of police processing. Fifty per cent of sexual assault cases reported to the Winnipeg City Police during the pre- and post reform periods were examined, and cases that proceeded beyond the police investigation (i.e., for which charges were laid) were tracked through the courts on the same instrument.

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[8] Youth Division handles many of these cases because the child abuse unit has become overburdened with an excessive caseload and calls are backed up for weeks.

Winnipeg City Police received approximately 740 sexual assault complaints in 1981-82 and 1180 in 1984-85. (These totals include all sexual offences, including incest and other offences not relevant to the evaluation.) A 50 per cent random sample of sexual offences was drawn manually (every second card) from the card files held in the Bureau of Police Records. Cases not relevant to the evaluation were removed.

The 1981-82 sample was comprised of complaints of rape, attempted rape, indecent assault, sexual intercourse with a female between 14 and 16, sexual intercourse with a female under 14, gross indecency, and buggery. To permit a comparison with the post reform sexual assault data, incest cases were excluded except when combined with any of the above offences. The 1984-85 sample consisted of 50 per cent of all cases that involved a complaint classified as sexual assault (s. 246.1), or later charged with that offence. Some cases involved other sexual and nonsexual offences in addition to the sexual assault. Selected for the post reform sample were all cases of sexual assault with a weapon, threats or causing bodily harm (s. 246.2) and aggravated sexual assault (s. 246.3). As in the prereform sample, some of these cases involved other offences as well. Again, incest shows up in the sample only when combined with one of the three levels of sexual assault. The 1981-82 sample consisted of a total 315 incidents involving 317 complainants and 306 accused. The 1984-85 sample consisted of 523 incidents, involving 528 complainants and 469 accused.

Incidents that were one-time events and that involved more than one complainant or more than one accused were classified as a single incident of sexual assault. Ongoing offences that had multiple complainants and involved one accused, or alternately multiple accused and one complainant, were classified as separate incidents. Because multiple accused and/or multiple complainants were involved in several cases, the total number of complainants and accused differs from the total number of incidents.

Information obtained at the police level included socio-demographic details of the complainants and accused, description of the incidents (time, location, resistance, injuries sustained, medical treatment, accomplices, witnesses, etc.), victim-offender relationship, promptness of reporting, offender's prior record, methods of classifying complaints, subjective data (i.e., personal comments reported in files), and any information about the police processing of cases. Reports dropped at the police level were examined to determine whether the decision was made by the complainant or police and the reason for termination.

b. Crown prosecution files

The next level of criminal justice processing, crown prosecution, is under the jurisdiction of the provincial Attorney General's Department of Manitoba. The offices are comprised of approximately 40 prosecuting attorneys, including directors and senior personnel. Prosecutors are assigned to each of the three court levels -- Provincial Court, Court of Queen's Bench, and Court of Appeal. A single case could involve three or even four different prosecuting attorneys at different levels of the court system. For example, the first appearance for an accused may occur in Docket Court, where bail, custody matters, remands, etc. are dealt with. Appearance at a preliminary hearing would involve another prosecutor, while a trial would likely be heard in Superior Court and involve yet a third crown attorney. Appeal Court also has its own personnel assigned to cases that have been successfully appealed.

Crown attorneys determine whether a complaint should be prosecuted, how the case should be prepared and assess the likelihood of conviction. Crown attorneys have the discretion to alter or reclassify charges as they decide which charges to proceed with in order to obtain a conviction. They can also negotiate with defence counsel to secure a guilty plea from the accused in exchange for a reduction in the number or seriousness of the charges, or a lenient recommendation for sentence.

In cases that proceeded to the crown level, information on prosecution proceedings was gathered on the second section of the instrument. Data pertaining to the crown attorney's involvement provided details on charging, evidence, witnesses, plea-bargaining, preliminary hearings, and preparation of complainants for court. Information regarding the termination of charges at this level was collected including details concerning whether this decision was initiated by the crown attorney, prior to a preliminary hearing, by a judge at a preliminary hearing, or by the complainant and why this decision was made. The crown files were also used to obtain information concerning the trial process including the nature of final charges, disposition, sentencing and appeals.

Seventy-eight cases in the prereform period and 230 cases in the post reform period were tracked at the crown prosecutor's level. Juveniles, who made up 17.6 per cent of the 1981-82 accused and 17.9 per cent of the 1984-85 accused, were not tracked beyond the police level. These cases are handled by Youth Court.

c. Court files

Finally, the court level will result in the final disposition of charges for cases still in the criminal justice system. A case may be heard in Provincial Court, or Court of Queen's Bench. The full range of processing at the court level can involve a preliminary hearing, a trial, sentence, and appeal. The trial may be heard either by a judge alone, or by a judge and jury. After the trial has ended the crown or defence counsel may appeal the decision, an action that could result in a new trial. The crown attorney has less latitude than defence in the right to appeal a decision and can only lodge an appeal on a question of law.

In Manitoba, most sexual assault cases at the Provincial Court level are preliminary hearings. A preliminary hearing is available for any indictable offence, including all sexual assaults unless the charge against the defendant is simple sexual assault and the crown attorney elects to proceed through summary conviction.

Preliminary hearings are generally regarded as advantageous to the defence for a number of reasons. First, a preliminary hearing allows the defence to assess the strengths and weaknesses of the crown attorney's case. Second, a preliminary hearing reveals the quality of the crown attorney's witnesses, especially the complainant. On the basis of this information, defence counsel can prepare most effectively to cross-examine these witnesses at trial. Third, the preliminary hearing yields a transcript of evidence with which crown witnesses may be challenged at trial, if they are inconsistent in their testimony. Finally, a preliminary hearing delays proceedings and the advantages of this delay accrue to the defence. For example, crown witnesses may disappear, forget, lose interest, or succumb to pressure to drop the charges. Since the onus of establishing the case is on the prosecution, the longer the interval between the commission of the crime and trial, the less likely the onus will be met. In addition, the defence need not (and typically does not) call any evidence, so nothing about its case is revealed at the preliminary level.

At a preliminary hearing, the judge makes no assessment of the credibility of the witnesses called by the crown attorney. In contrast, at trial, the crown attorney must present evidence that establishes the defendant's guilt beyond a reasonable doubt and this evidence is assessed for credibility (i.e., the weight accorded to the evidence may be discounted if the witness is found not to be credible).

It is unusual for changes to be made to charges at the preliminary level. At this stage of the proceedings, the crown attorney typically sets out the case and lets the judge determine whether to commit the defendant on all of the charges. The crown attorney's case typically consists of testimony by the victim and the police officers involved in arrest and investigation. Serious plea negotiations between prosecution and defence usually occur prior to trial, although they can take place at the Provincial Court level. However, if a deal is reached, the matter does not appear as a preliminary hearing. Rather, it will be resolved by way of a guilty plea by the defendant.

Usually, the only cases that proceed in Provincial Court are summary conviction offences and the crown attorney can only elect to proceed summarily in cases of simple sexual assault (Criminal Code section 246.1). Summary conviction offences carry low maximum penalties (i.e., a maximum of six months imprisonment and/or a maximum $2000 fine) and hence, crown attorneys are unwilling to designate most sexual offences (perceived as serious crimes) as belonging in this category. Thus, most sexual assaults are handled as indictable offences, allowing the defendant to elect trial by Provincial Court judge, Queen's Bench judge, or Queen's Bench judge and jury. The latter two choices are favoured because the defendant is then entitled to a preliminary hearing. Often the defendant agrees to plead guilty in exchange for a reduction in the number or seriousness of the charges, or some lenient recommendation for sentence by the crown prosecutor. If the defendant pleads guilty prior to a trial, the plea is heard at a sentencing hearing.

By the time a case gets to Court of Queen's Bench, charges have been reviewed by at least two crown attorneys and confirmed by the preliminary hearing judge. Typically, the only reason to make changes is if a deal has been negotiated and the defendant agrees to plead guilty. The prosecution bears the onus of proof and if it does not establish the defendant's guilt beyond a reasonable doubt on every element of the offence, the defendant is entitled to be acquitted.

The third section of the instrument was completed if a case proceeded to a sentencing appearance, preliminary hearing, and/or trial. It was tracked to the appropriate court office (Provincial or Queen's Bench) and court documents were used to supplement information concerning the nature of final charges, dispositions, sentencing and appeals. Fifty-three cases at the prereform level and 178 at the post reform level were tracked at the court level.

d. Files of the sexual assault centre

The sexual assault crisis program in Winnipeg functions within the Klinic Community Health Centre and offers crisis intervention, counselling, support, information, and advocacy to victims (and their family or friends). The service has been operating for over 12 years and presently employs a full-time coordinator and a counsellor who direct approximately 25 volunteers at any given time. Contact with the agency may be initiated by the victim immediately after an assault occurs, or by referral from some other person or agency (e.g., police or hospital).

Data were gathered from the sexual assault centre for the two years prior to implementation of Bill C-127 (1981-82) and two years afterwards (1984-85).[9] During 1981, 128 incidents of sexual assault were reported to the program (then called the rape crisis program) and in 1982 a total of 131 incidents was reported. In 1984 and 1985, 243 incidents and 275 incidents, respectively, were reported to the Klinic sexual assault program. These totals do not include incest.

The study data consisted of 60 cases from the prereform period and 57 cases from the post reform period. These were randomly selected in order to obtain two relatively comparable samples from each of the two time periods. Files spanning the study periods (for example, a 1983 report that remained "in the system" in 1985) were excluded. This was done to ensure that any differences produced by the legislation would be clear. The legislation applies to the entire process from reporting to dispositions and it was necessary to ensure that the data were unique to the pre- or post reform periods. The cases selected for the prereform period include offences that now fall within the revised classification of sexual assault (i.e., rape, attempted rape, indecent assault). The post reform sample consists of offences classified as sexual assault or attempted sexual assault. Data from the two samples were compared in order to evaluate any changes in victim responses that might have taken place as a result of Bill C-127.

3.4.2 Interviews

Interviews were carried out with key actors involved in investigating, prosecuting, defending, and adjudicating sexual assault cases as well as those involved with treating and counselling victims. Respondents included members of the police, prosecuting attorneys, defence attorneys, judges, physicians and counsellors from the sexual assault centre.

The interviews probed for a wide variety of information relating to the nature of assaults before and after the legislation, perceptions about the processing before and after the legislation, evaluative statements on the legislation's effect on the victim, the criminal justice system, and finally suggestions for changes required.

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[9] Files for the year 1981 were missing and it was presumed that they had been shredded. Therefore, with the exception of four 1981 cases, the earlier sample consists of 1982 files.

Respondents all had experience before and after the sexual assault amendments. Five police officers from the Crime Division in the Winnipeg Police Department, eight crown attorneys, twelve defence lawyers, fourteen judges (eight Provincial, five Queen's Bench, one Court of Appeal), five people from the sexual assault centre, and two physicians were interviewed.

In addition, interviews were conducted with 16 sexual assault victims who had some experience with the criminal justice system after the implementation of Bill C-127. Interviews with victims were obtained with co-operation of the Victim Impact Statement Project, a program jointly funded by the federal Department of Justice and the Manitoba Department of the Attorney General. The project provides victims of specified crimes (including sexual assaults) with an opportunity to explain how the crime has affected them physically, financially and emotionally.

All sexual assault victims with a known address were sent a letter explaining the study and requesting respondents' participation in it. The letters were followed by a phone call by a female interviewer. We were able to interview 16 victims out of 80 sent letters. We spoke with seven others who were unwilling to be interviewed. The remaining victims had moved and/or had no phone number listed.

3.4.3 Court monitoring

In addition to using criminal justice system files and key informant interviews to study the way the courts have responded to sexual assault victims, court monitoring was also carried out.

Researchers find it difficult to collect pertinent data because they can only get it by sitting in on hearings that proceed, and most criminal cases do not proceed. The majority are dealt with by way of stay, guilty pleas and adjournments, that do not provide information on the nature of the court process or treatment of the victim.[10] Nevertheless, we were able to monitor a sample of cases that did proceed at both the preliminary and trial level of Provincial Court and at Court of Queen's Bench, and these data are described below.

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[10] For example, in this sample, less than one-third of cases scheduled on the court docket (31.4% or 32 of 102 cases) proceeded as preliminaries or trials on the dates scheduled.

The period monitored was from January 12 to May 1, 1987. For this period, a calendar of all sexual assault cases was compiled from information provided by the crown attorneys' offices for both the inferior and superior courts. The total number of scheduled cases was 102, with a mean of approximately six cases set per week. Initially, court monitoring was conducted two days per week, but it quickly became apparent that most of these cases were not proceeding, so it was necessary to attend court every day to catch the minority of cases that did go on.

Observers attended six trials involving sexual assaults as well as five preliminary hearings and five appearances for sentencing. Attempts were made to observe all court cases during a four month period. From time to time, there were more cases than observers and some hearings were missed. The court observation component provided data on characteristics of the offence, nature of charges, details of the prosecution and the defence, details of whether the assaultive rather than the sexual aspect of the offence was emphasized, involvement of witnesses, whether questions about the complainant's character were allowed, issues of corroboration, recent complaint, admissibility of evidence regarding sexual history with the accused, "honest belief in consent," comments of the judge, and final disposition.

4.0 RESPONSES TO REPORTS OF SEXUAL ASSAULT INCIDENTS

This section of the report provides a comparison of the criminal justice processing of sexual assault offences prior to and following the implementation of Bill C-127.

As previously indicated, the 1981-82 sample consists of 315 randomly selected sexual offences from the files of the Bureau of Police Records (Winnipeg Police Department), involving 317 complainants and 306 accused. The 1984-85 sample consists of 523 incidents, involving 528 complainants and 469 accused. Because multiple accused and/or multiple complainants were involved in several cases, the total number of complainants and accused differs from the total number of incidents. Cases not terminated at police level were tracked to the crown prosecution and court levels.

Included in the 1981-82 sample are complaints of rape, attempted rape, indecent assault, sexual intercourse with a female between 14 and 16, sexual intercourse with a female under 14, gross indecency, and buggery. To permit a comparison with the post reform sexual assault data, incest cases were excluded except when combined with any of the above offences. Selected for the post reform sample were all cases of sexual assault with a weapon, threats or causing bodily harm (s. 246.2) and aggravated sexual assault (s. 246.3) as well as 50 per cent of all cases that involved a complaint classified as, or later charged with, sexual assault (s. 246.1). As in the prereform sample, some cases involved other sexual and nonsexual offences in addition to sexual assault and again, incest shows up in the sample only when combined with one of the three levels of sexual assault.

Missing information has been excluded from the percentages. In cases where "No Information" has been excluded from the table, sample size refers to the number of cases in which data were available. In bivariate tables, "N" refers to the number of cases in which information was available on both attributes.

4.1 Police processing

4.1.1 Initial classification of complaints

When the police first receive a complaint of a sexual assault, they apply an initial classification to the report (Table 1). These often do not reflect the official charges. In the pre-legislative reform period of 1981-82, the complaints were classified as: indecent assault (158 counts), rape (106 counts), attempted rape (46 counts), buggery (3 counts), gross indecency (12 counts), incest[1] (4 counts), and "others" (19 counts). In the post-legislative period of 1984-85, complaints were classified as: sexual assault (425 counts), sexual assault with treats/bodily harm/weapon (35 counts), aggravated sexual assault (14 counts), rape[2] (4 counts), indecent assault[3] (9 counts), gross indecency (4 counts), buggery (1 count), and "other"[4] (56 counts).

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[1] Incest was **only** included in the sample when combined with other offences at classification, initial charges laid, or conviction.

[2] Rapes were misclassified by the police. In three cases, no charges were laid and in the fourth, a charge of sexual assault with threats was laid.

[3] Indecent assault was subsumed under sexual assault after the law reform. Some of the cases involved offences that occurred prior to the amendments in January, 1983.

[4] "Other" sexual offences was used as a catchall category by the police and includes a variety of offences, many of which did not involve official charges. "Other" was also used by the coders to include initial classification of non-sexual offences.

Table 1 Initial classification of offence by police (Pre and post reform data)

Offence	Counts	PRE Freq.	PRE Per cent	POST Freq.	POST Per cent
Sexual Assault	One	--	--	403	75.3
	Two	--	--	8	1.5
	Three	--	--	2	.4
Sexual Assault with Threats /Bodily Harm	One	--	--	35	7.5
Aggravated Sexual Assault	One	--	--	14	3.0
Rape	One	106	31.6	4	.7
Attempted Rape	One	44	13.1	--	--
Indecent Assault	One	149	44.5	2	.4
	Two	3	.9	2	.4
	Three	3	.9	1	.2
Buggery	One	3	.9	1	.2
Gross Indecency	One	8	2.4	4	.7
	Two	2	.6	--	--
Incest	Two	2	.6	--	--
Other	One	10	3.0	49	9.16
	Two	3	.9	2	.4
	Three	1	.3	1	.2
TOTALS		335	100.0	528	100.0

4.1.2 Complaints "founded" or "unfounded"

In both periods, police regarded the majority of complaints received (Table 2) as "founded" (68.9 per cent in 1981-82 and 73.6 per cent in 1984-85). Reasons for unfounded complaints included: no suspects, complainant refused to co-operate, bad character of complainant, complainant lied to police, complainant retracted story, and complainant refused to proceed on a previous complaint. While more of the post reform cases were classified as "founded," the difference between the two time periods was not statistically significant at the .05 level.

Table 2 **Police Founded or Unfounded Complaint (Pre and post reform data)** (per cent)

	PRE N=315	POST N=523
Complaint Founded	68.9	73.6
Complaint Unfounded	31.1	26.4

Z-Statistic	Significance
-1.47	0.1416

4.1.3 Evidence of "bad character"

Often the decision of whether or not to lay a charge is made early in the investigation. This decision may be based on the judgment of police as to the perceived credibility of the complainant. These early interpretations can have a profound impact on the outcome of the case. Evidence of "bad character" was indicated in 17.8 per cent of the prereform cases and 22.2 per cent of the post reform cases. The nature of this evidence typically pertained to the sexual morality of complainants. There was very little difference between the two time periods. However, there were eight (2.5 per cent) prostitutes in the prereform sample and 20 (3.8 per cent) in the post reform sample. The slight increase in sexual assaults reported by prostitutes in 1984-85 could reflect the intended shift in the definition of the new law to emphasize the assaultive rather than the sexual aspect of the offence.

In the prereform sample no charges were laid in any of the cases involving prostitutes: in six cases the complainant refused to proceed and withdrew the complaint, and in two cases the suspect was not located. In the post reform sample charges were laid in nine cases and four offenders were sentenced. In five of the cases, complainants did not show up in court and their absence terminated proceedings. Of the remaining 11 cases, nine complainants refused to proceed, the suspect was not located in one case, and in another there was no information given except that the crown attorney decided not to charge the accused. The police are willing to investigate these cases and prosecutions are increasing, but the complainants' willingness to proceed is a necessary factor in obtaining convictions. It appears that prostitutes are regarded as legitimate complainants and they are more willing to report sexual offences. It is not known whether this is due to restrictions on questions about their sexual past, whether there is more willingness by police and others in the criminal justice system to take these cases seriously, or some other reason. It is clear that attitudes are shifting, as cases of this nature are being prosecuted following passage of Bill C-127.

Data from the sexual assault centre provide some support for this position. Two prostitutes in the post reform sample reported sexual assaults to the police and both complaints were classified as "founded". There was no indication in the prereform sample of any prostitutes reporting assaults to the police. Counsellors suggested there has been an improvement in the way police interact with complainants, but it is not known whether this is a function of the law, a change in police attitudes, a more conciliatory attitude by sexual assault counsellors in 1984-85 toward the police, or a combination of factors.

4.1.4 Interviews with complainant

The majority of complainants (71.8 per cent) in 1984-85 had one interview with the police while in 1981-82, only 56.3 per cent had one interview (Table 3). In 1981-82 the complainant was able to identify the suspect in 52.1 per cent of the cases and the suspect was questioned or apprehended in 53.2 per cent of the cases. In 1984-85, the suspect was identified in 71.3 per cent of the cases (Table 4) and questioned or apprehended in 71.7 per cent of the cases (Table 5). In 30.1 per cent of the 1981-82 cases and 28.0 per cent of the 1984-85 cases, the offender admitted guilt to police (Table 6). In all but the last of these tables, the differences were statistically significant.

Table 3 **Number of interviews complainant had with police**
Pre and post reform data (per cent)

	PRE N=293	POST N=504
Zero	1.7	1.6
One	56.3	71.8
Two	31.1	23.2
Three or more	10.9	96.6

Chi-Square	D.F.	Significance
28.30	3	0.0000

Table 4 **Complainant able to identify suspect**
Pre and post reform data (per cent)

	PRE N=303	POST N=509
Yes	52.1	71.3
No	47.9	28.7

Z-Statistic	Significance
- 5.50	< .001

Table 5 **Suspect questioned or apprehended**
Pre and post reform data (per cent)

	PRE N=314	POST N=523
Yes	53.2	71.7
No	46.8	28.3

Z-Statistic	Significance
- 5.43	< .001

Table 6 **Did offender admit guilt to police?**
Pre and post reform data (per cent)

	PRE N=132	POST N=325
Yes	30.1	28.0
No	69.9	72.0

Z-Statistic	Significance
.492	.6228

4.1.5 Charges laid

A charge was laid in 32.4 per cent of the 1981-82 complaints and in 51.8 per cent of the 1984-85 complaints (Table 7). Differences between the two time periods were statistically significant at the .001 level. It is possible police are laying charges more readily following the law reform because of a relaxation of requirements for corroboration and recent complaint.

Table 7 **Was charge laid?**
Pre and post reform data (per cent)

	PRE N=315	POST N=523
Yes	32.4	51.8
No	67.6	48.2

Z-Statistic	Significance
- 5.48	< .001

As seen in Table 8 below, in the 1981-82 period, charges laid involved indecent assault (74 counts), rape (37 counts), attempted rape (12 counts), sexual intercourse with a female between 14 and 16 (two counts), sexual intercourse with A female under 14 (one count), gross indecency (28 counts), buggery (four counts), incest[5] (five counts) and "other"[6] (71 counts).

In 1984-85, charges laid involved: sexual assault s. 246.1 (468 counts); sexual assault with a weapon, threats to a third party or causing bodily harm s. 246.2 (29 counts), and aggravated sexual assault s. 246.3 (13 counts). In conjunction with the three levels of sexual assault that are of major interest to the study, there were a number of other charges laid: indecent assault[7] (82 counts); gross indecency (104 counts); buggery (16 counts); sexual intercourse with a female between 14 and 16 (six counts); sexual intercourse with a female under 14 (33 counts); incest (16 counts); and "other" (104 counts). There was a total of 184 counts in 1981-82 and 519 counts in 1984-85.

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[5] Incest was included only when combined with other offences.

[6] "Other" typically refers to non-sexual offences including: uttering threats, possessing a weapon dangerous to public peace, party to an offence, forcible confinement, breach of parole, and assault.

[7] The charges of Indecent Assault pertain to offences that occurred prior to the law reform in 1983, though they were not reported to police until the study period (1984-85). These cases were included in the sample because they also involved a charge of sexual assault.

Table 8 Initial charges laid by police (including juveniles) Pre and post reform data

		PRE		POST	
Offence	Counts	Freq.	Per cent	Freq.	Per cent
Sexual Assault	One	--	--	137	26.4
	Two	--	--	49	9.4
	Three	--	--	15	2.9
	Four	--	--	4	.8
	Eight	--	--	8	1.5
	Nine	--	--	12	2.3
Sexual Assault with Weapon/Threats/Bodily	One	--	--	27	5.2
	Two	--	--	1	.2
Aggravated Sexual Assault	One	--	--	13	2.5
Rape	One	35	19.0	--	--
	Two	1	.5	--	--
Attempted Rape	One	10	5.4		
	Two	1	.5	--	--
Indecent Assault	One	47	25.5	26	5.0
	Two	6	3.3	20	3.9
	Three	5	2.7	4	.8
	Four	--	--	1	.2
Buggery	One	4	2.2	14	2.7
	Two	--	--	1	.2
Gross Indecency	One	22	12.0	50	9.6
	Two	3	1.6	7	1.3
	Three	--	--	4	.8
	Four	--	--	2	.4
	Five	--	--	4	.8
Sexual Intercourse with a Female Under 14	One	1	.5	23	4.4
	Two	--	--	5	--
Sexual Intercourse with a Female between 14 and 16	One	2	1.1	6	10.0
Incest	One	1	.5	16	3.1
	Two	2	1.1	--	--
Other	One	26	14.1	50	9.6
	Two	10	5.4	15	2.9
	Three	7	3.8	3	.6
	Four	1	.5	--	--
	Six	--	--	1	.2
	Nine	--	--	1	.2
TOTALS		184	99.7	519	107.9

In 1981-82, 45.9 per cent of all charges were laid within 24 hours of the complaint compared with 34.6 per cent of the 1984-85 cases (Table 9). In 84.6 per cent of the 1981-82 cases and 68.4 per cent of the 1984-85 cases the police were the first agency contacted by the complainant (Table 10). The difference between the two periods was statistically significant at the .05 level. Because of an overall increase in child complainants (see Table 8) in the later time period, many of the cases enter the system through Child and Family Services and the hospital.

Table 9 **Elapsed time of charge since offence reported**
Pre and post reform data (per cent)

	PRE N=85	POST N=217
Immediately (< 24 hours)	45.9	34.6
25 - 48 hours	20.0	13.8
49 hours - 7 days	12.9	17.1
8 days - < 1 month)	10.6	16.1
1 - 10 months	10.6	18.4

Chi-Square	D.F.	Significance
7.82	4	0.0983

Table 10 **Order in which police were contacted**
Pre and post reform data (per cent)

	PRE N=85	POST N=217
First	84.6	68.4
Second	13.5	24.5
Third	1.9	7.1

Chi-Square	D.F.	Significance
28.48	2	0.0000

4.1.6 Investigation terminated at the police level

There was a significant decrease in cases terminated at the police level in the post reform period (Table 11). In 1981-82, 65.7 per cent or 207 cases were terminated at the police level. Of these cases, 187 (90.3 per cent) were terminated by police (78 were unfounded, 21 were founded but no charge was laid, and 88 had no suspect apprehended), while 20 (9.7 per cent) were terminated at the request of the complainant or parent/guardian (Table 12). In 1984-85, 44.7 per cent or 234 cases were terminated at the police level. Of these, 210 or 89.7 per cent were terminated by police (114 were unfounded, 40 were founded but no charge was laid, and 56 had no suspect apprehended), while 24 or 10.3 per cent were terminated at the request of the complainant or parent/guardian.

Table 11 **Investigation terminated at police level**
Pre and post reform data (per cent)

	PRE N=315	POST N=523
Yes	65.7	44.7
No	34.3	55.3

Z-Statistic	Significance
5.89	< .001

Table 12 **Investigation terminated by whom?**
Pre and post reform data (per cent)

	PRE N=207	POST N=234
Complainant	9.7	10.3
Police	90.3	89.7

Z-Statistic	Significance
- 0.21	0.8336

4.1.7 Summary

A slightly larger percentage of cases was classified as founded in the post reform period, and cases involving prostitutes as complainants increased. Significantly more of the accused were known to complainants and charges were laid more often in the post-reform period. It appears that there has been a shift in attitude towards complainants of sexual assault and that since the law reform police are more inclined to investigate cases that are of not stereotypical.

4.2 Prosecution and court proceedings

4.2.1 Charges proceeded with or dropped at prosecution level

Charges were laid in 108 cases in 1981-82 and in 289 cases in 1984-85. Thirty of the accused in the 1981-82 cases and 59 of the accused in the 1984-85 cases involved juveniles. Charges were laid in 16, or 53.3 per cent of the cases involving juveniles in the prereform period and 40, or 67.8 per cent in the post reform period. Those that proceeded were processed by the Youth Court. Excluding these cases leaves 78 of 315 (24.8 per cent) of cases proceeding from the police to the adult crown level in 1981-82 compared with 230 of 523 (44.0 per cent) in 1984-85. In 55.1 per cent or 43 (1981-82) and 64.8 per cent or 149 (1984-85) of the remaining cases, the charges proceeded with by the crown attorneys were consistent with those initially laid by police (Table 13). The other cases had charges added, deleted or stayed.

Table 13 **Were charges proceeded consistent?**
Pre and post reform data (per cent)

	PRE N=78	POST N=230
Yes	55.1	64.8
No	44.9	35.2

Z-Statistic	Significance
- 1.52	0.1286

As shown in Table 14, 26 of the 78 1981-82 cases (33.3 per cent) were stayed by the Crown at some stage of the proceedings compared with 56 of 230 (24.3 per cent) of the 1984-85 cases.

Table 14 **Was case eventually stayed by crown prosecutor? Pre and post reform data** (per cent)

	PRE N=78	POST N=230
Not Stayed	66.7	75.7
Yes, at Trial	1.3	1.7
Yes, between Preliminary and Trial	11.5	7.0
Yes, before Preliminary	20.5	15.6

Chi-Square	D.F.	Significance
3.24	3	0.3557

4.2.2 Trial and disposition

The accused was committed to a formal trial in 53.8 per cent (1981-82) and 40.4 per cent (1984-85) of the cases reaching the crown prosecution level (Table 15).

Table 15 **Accused committed to trial**
Pre and post reform data (per cent)

	PRE N=78	POST N=230
Yes	53.8	40.4
No	46.2	59.6

Z-Statistic	Significance
2.06	0.0394

In 1981-82, the majority of those going to trial were tried by a judge of the Court of Queen's Bench (63.2 per cent) as opposed to a Provincial Court judge (26.3 per cent) or judge and jury (10.5 per cent) (Table 16). In 1984-85, most offenders who had trials were tried by a judge of the Court of Queen's Bench (67.0 per cent) or a Provincial Court judge (25.0 per cent), while 8.0 per cent were tried by a judge and jury.

Table 16 **Trial by judge or judge and jury**
Pre and post reform data (per cent)

	PRE N=38	POST N=88
Provincial Court Judge	26.3	25.0
Queen's Bench Judge	63.2	67.0
Judge and Jury	10.5	8.0

Chi-Square	D.F.	Significance
0.28005	2	0.8696

A guilty verdict was delivered in 64 per cent or 16 out of 25 (1981-82), and 47 per cent or 31 out of 66 (1984-85) cases (Table 17).

Table 17 **What was verdict?**
Pre and post reform data (per cent)

	PRE N=25	POST N=66
Guilty	64.0	47.0
Not Guilty	36.0	53.0

Z-Statistic	Significance
1.45	0.1470

Of the 42 court appearances in 1981-82, 12 were found not guilty, one was stayed at trial, 13 entered guilty pleas and 16 were found guilty. Of the 93 court appearances in 1984-85, 22 were found not guilty, four were stayed at trial, 36 entered guilty pleas and 31 were found guilty.

In 1981-82, there were 12 convictions for one count of rape, 10 of one count of indecent assault, six of one count of gross indecency, three of one count of buggery, three of one count of "other" sexual offences, two of one count of sexual intercourse with a female between 14 and 16, two of one count of incest, and one each of two counts of attempted rape and two counts of indecent assault (Table 18).

In 1984-85, there were 74 convictions for: one count of sexual assault; 28 for two or more counts of sexual assault; 16 for one count of indecent assault; 15 for one count of gross indecency; 11 for one count of sexual assault with threats/bodily harm; six for one count of incest; four for one count of "other"; three each of two counts of gross indecency and one count of buggery; two each of two counts of indecent assault and one count of sexual intercourse with a female under 14; and one each of one count of aggravated sexual assault and one count of sexual intercourse with a female between 14 and 16.

Table 18 Convictions on sexual offences Pre and post reform data

Offense	Counts	Charges Pre	Per cent	Post	Per cent
Sexual Assault	One	--	--	74	44.6
	Two or More	--	--	28	16.9
Aggravated Sexual Assault	One	--	--	1	.6
Sexual Assault with Threats/ Bodily Harm	One	--	--	11	6.6
Attempted Rape	Two	1	2.5	--	--
Rape	One	12	30.0	--	--
Indecent Assault	One	10	25.0	16	9.6
	Two	1	2.5	2	1.2
Gross Indecency	One	6	15.0	15	9.0
	Two	--	--	3	1.8
Buggery	One	3	7.5	3	1.8
Sexual Intercourse with a Female under 14	One	--	--	2	1.2
Sexual Intercourse with a Female 14 - 16	One	2	5.0	1	.6
Incest	One	2	5.0	6	3.6
Other	One	3	7.5	4	2.4
TOTALS		40	100.0	166	100.0

In the two time periods, 15 (in 1981-82) and 27 (in 1984-85) offenders were also convicted on non-sexual offences (Table 19).

Table 19 **Convictions on non-sexual offences**
Pre and post reform data (per cent)

	PRE N=40	POST N=152
Yes	37.5	17.8
No	62.5	82.2

Z-Statistic	Significance
2.68	0.0074

4.2.3 Appeals

Nine of the 1981-82 cases were appealed while 26 of the 1984-85 cases were appealed. Seven of the cases in the prereform period were appealed by defence and two by the crown attorney. In the post reform period the corresponding figures were 22 and four, respectively (Table 20).

Six of the cases in the prereform period and 19 in the post reform period were appealed on the grounds that the sentence was too harsh. Two and four respectively were appealed because the sentence was seen to be inadequate. The remaining one in the prereform period and two in the post reform period pertained to a question of law (Table 21). The appeal decisions are provided in Table 22.

Table 20 **If appealed, by whom?**
Pre and post reform data (per cent)

	PRE N=9	POST N=26
Defence	77.8	84.6
Crown Attorney	22.2	15.4

Z-Statistic	Significance
- .46	0.6456

Table 21 **Grounds for appeal**
Pre and post reform data (per cent)

	PRE N=9	POST N=25
Sentence too harsh	66.6	76.0
Question of law	11.1	8.0
Sentence inadequate	22.2	16.0

Chi-Square	D.F.	Significance
.296	2	0.8628

Note: No information was available for one case in the post reform period.

Table 22 **Appeal decision**
Pre and post reform data (per cent)

	PRE N=9	POST N=25
Dismissed	33.3	60.0
Overturned	22.2	12.0
Sentence reduced	33.3	16.0
Sentence increased	11.1	12.0

Chi-Square	D.F.	Significance
2.329	3	0.5102

Note: No information was available for one case in the post reform period.

4.2.4 Summary

Figures 3 to 10 demonstrate the filtering of sexual assault reports in the criminal justice system (Winnipeg site). As seen in Figure 3, of 315 reports to the police in the prereform period, a total of 207 were terminated prior to any formal charges being laid: police deemed 187 reports "unfounded"; of the 109 "founded" cases, charges were not laid in 21, while in 88 cases the suspect was not apprehended. The remaining 20 were terminated at the request of the complainant or the complainant's parent/guardian.

Charges were laid in 102 cases (of 108 forwarded to crown prosecution), 30 cases involved juveniles and 78 proceeded to the adult system. The crown attorney stayed 25 of the 78 cases, retaining 53, that proceeded to court. Of the 53, 11 pleaded guilty and appeared at a sentencing hearing, and 42 were committed to trial. At trial, 12 were acquitted, one was stayed, 13 pleaded guilty, and 16 were convicted. A total of 40 dispositions were handed down.

Figures 4 through 6 provide a detailed breakdown of police reports for rape (Figure 4), attempted rape (Figure 5) and indecent assault (Figure 6).

Of those convicted of rape, 91.7 per cent received jail sentences and 8.3 per cent were sentenced to probation. The average sentence for rape was 66 months. Only one person was convicted of attempted rape. He received a sentence of 25 months. For those convicted of indecent assault, the following dispositions were given: jail (36.4 per cent), suspended sentence (27.3 per cent), discharge (18.2 per cent), probation (9.1 per cent), and fine (9.1 per cent). The average jail sentence for indecent assault was 14.3 months.

As seen in Figure 7, of 523 reports to the police in the post reform period, a total of 234 were terminated prior to any formal charges being laid: the police deemed 114 reports "unfounded"; of the 96 "founded" cases, charges were not laid in 40, while in 56 cases the suspect was not apprehended. The remaining 24 were terminated at the request of the complainant or the complainant's parent/guardian.

Charges were laid in 271 cases (of 289 forwarded to the crown attorney), 59 cases involved juveniles and 230 proceeded to the adult system. The Crown attorney stayed 52 of the 230 cases, retaining 178, that proceeded to court. Of these, 85 pleaded guilty and appeared at a sentencing hearing and 93 were committed to trial. At trial, 22 were acquitted, four cases were stayed, 36 pleaded guilty, and 31 were convicted. A total of 152 dispositions were handed down. (See Appendix I for a breakdown of initial charges, charges at trial, convictions, dispositions, sentences and appeals.).

Figures 8 through 10 provide a breakdown of police reports for sexual assault (Figure 8), sexual assault with threats/bodily harm/weapons (Figure 9), and aggravated sexual assault (Figure 10).

Of those convicted of sexual assault, 55.7 per cent received jail sentences. The average jail sentence was 21.8 months. Other dispositions were: suspended sentence (26.6 per cent), discharge (8.9 per cent), probation (7.6 per cent) or some other sentence (1.3 per cent). Ten people were convicted of sexual assault with threat/bodily harm/weapon. All received a jail sentence, the average length being 55.5 months. While 11 cases of aggravated sexual assault were forwarded to the crown attorney, only one of these resulted in a conviction, receiving a jail sentence of 84 months. Five others were convicted of lesser charges.

The filtering out of reports at the police/crown/court levels accounted for the termination of 87.3 per cent in the prereform period and 70.9 per cent in the post reform period (Table 23).

Although it appears that the attrition rate has decreased considerably in the post reform sample, work done previously in Winnipeg resulted in almost identical rates as the post reform period. A study of the processing of sexual assault cases over a two-year period in Winnipeg (Minch, Linden, Johnson; 1987) showed a conviction rate of 29 per cent, almost identical to that found in Winnipeg in the post reform period. While data are limited, Minch *et.al.* found that conviction rates for sexual assault are similar to those for other violent crimes such as assault and robbery.

This would suggest that the 1981-82 prereform sample is atypical. As seen in Table 23, this can be partly explained by a greater number of suspects in 1981-82 who were not apprehended.

Table 23 Filtering out of charges at the police/crown prosecution/court levels

	Prereform attrition		Post reform attrition	
	Number	Percentage	Number	Percentage
POLICE LEVEL	315	100.0	523	100.0
Unfounded	78 (24.8)	75.2	114 (21.8)	78.2
No suspect apprehended	88 (27.9)	47.3	56 (10.7)	67.5
Complainant initiated	20 (6.3)	41.0	24 (4.6)	62.9
Charges not laid	21 (6.7)	34.3	40 (7.6)	55.3
PROSECUTION LEVEL				
Youth Court	30 (9.5)	24.8	59 (11.3)	44.0
Stayed	25 (7.9)	16.8	52 (9.9)	34.0
COURT LEVEL				
Stayed at Trial/ Acquitted	13 (4.1)	12.7	26 (5.0)	29.0
Guilty plea	24 (7.6)	5.1	121 (23.1)	5.9
Found guilty at trial	16 (5.1)	--	31 (5.9)	--
TOTAL FILTERING OUT OF CASES AT THE POLICE, PROSECUTION, AND COURT LEVELS	275	87.3	371	70.9

Figure 3 WINNIPEG SEXUAL ASSAULT -- PRE-LEGISLATION - ALL OFFENCES

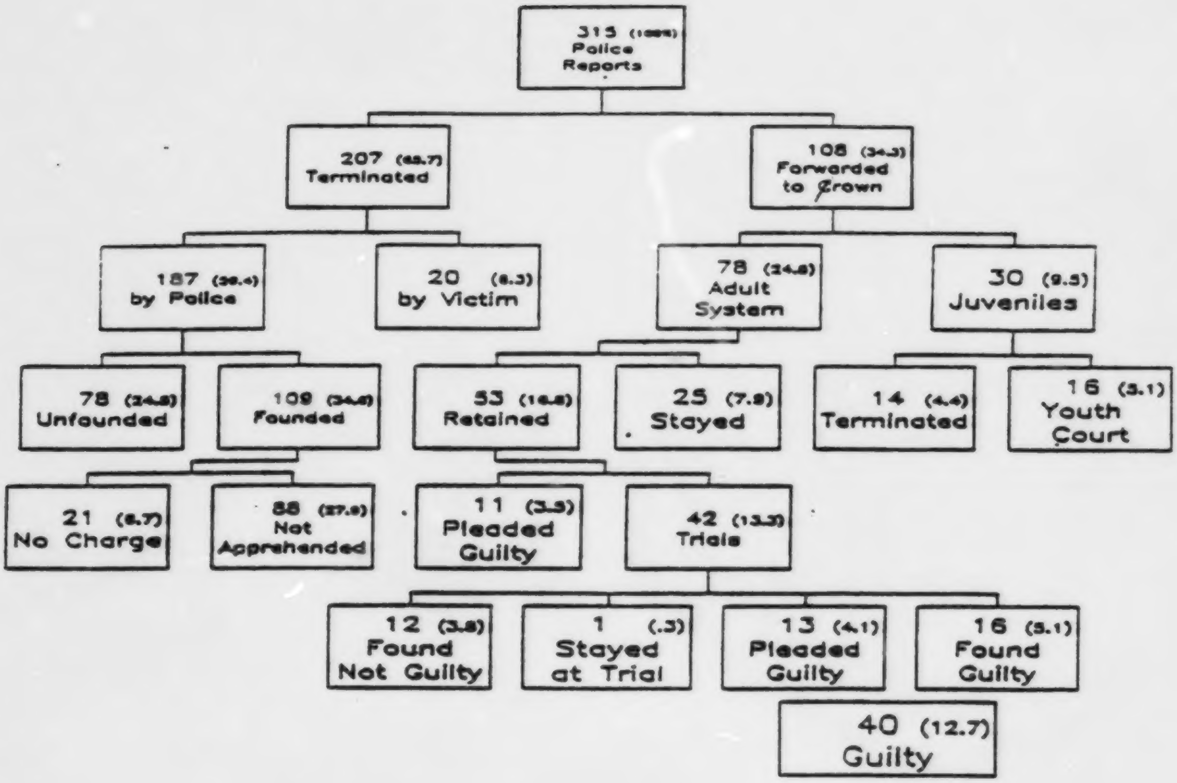
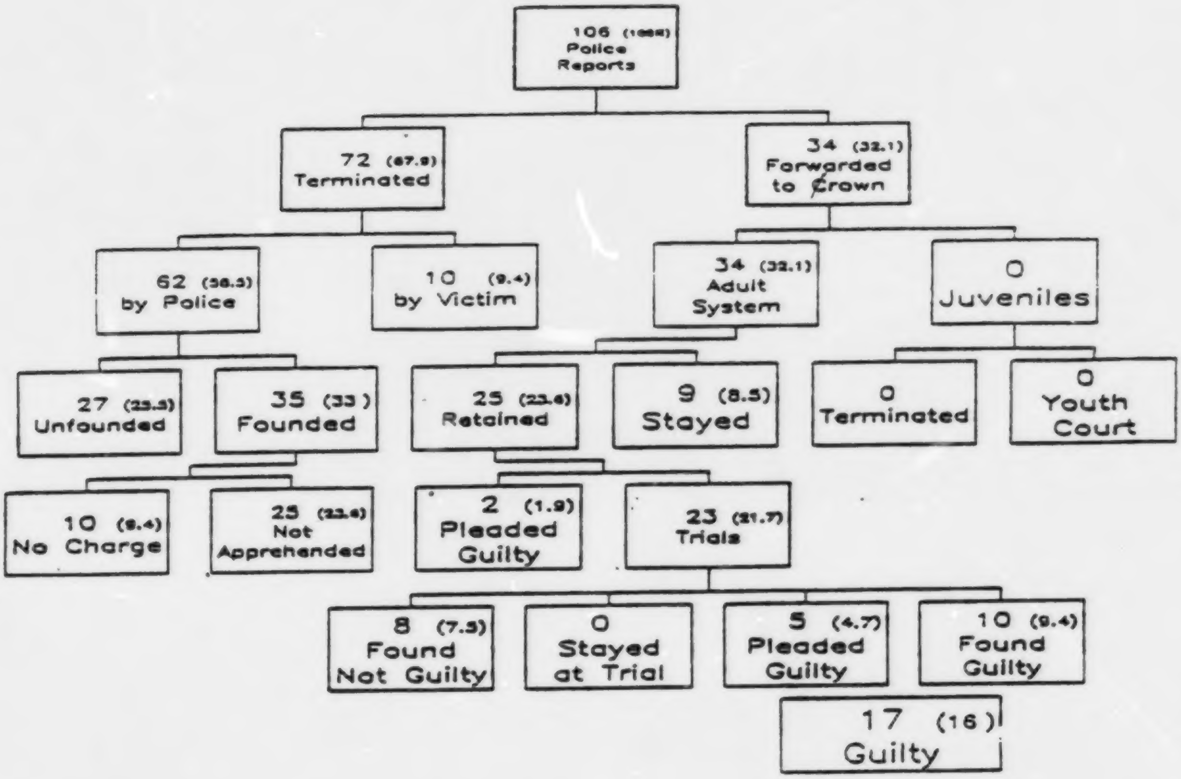
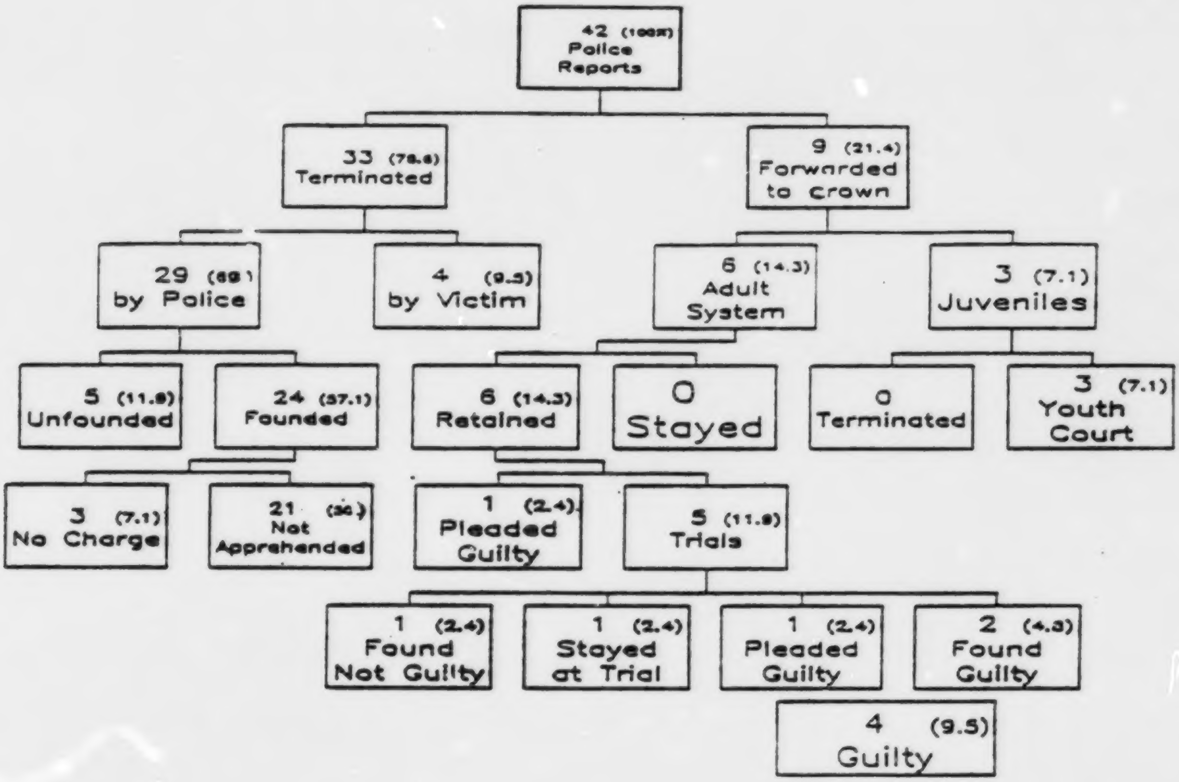


Figure 4 WINNIPEG SEXUAL ASSAULT -- PRE-LEGISLATION - RAPE



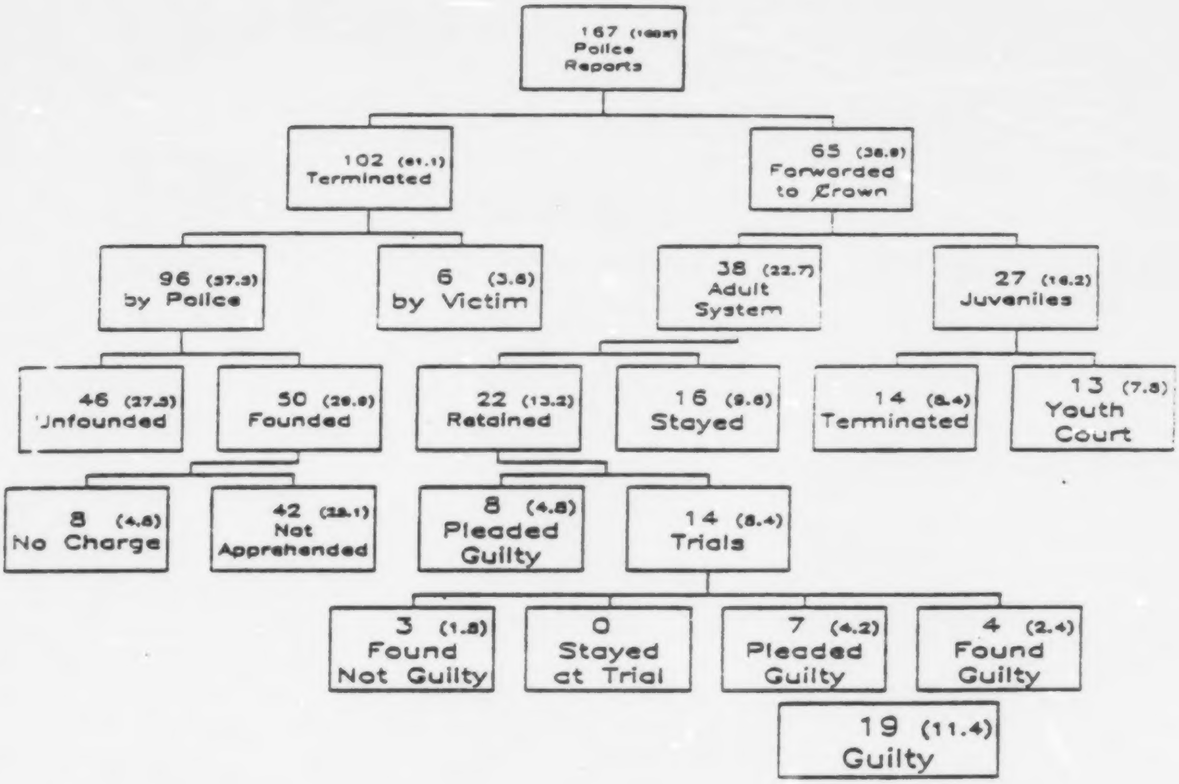
Of those convicted of rape, 91.7% received jail sentences and 8.3% were sentenced to probation. The average sentence for rape was 66 months.

Figure 5 WINNIPEG SEXUAL ASSAULT -- PRE-LEGISLATION - ATTEMPTED RAPE



Only one person was convicted of attempted rape. He received a sentence of 25 months.

Figure 6 WINNIPEG SEXUAL ASSAULT -- PRE-LEGISLATION INDECENT ASSAULT



For those convicted of indecent assault, the following dispositions were given:

Jail	36.4%
Average sentence	14.3 months
Suspended sentence	27.3%
Discharge	18.2%
Probation	9.1%
Fine	9.1%

Figure 7 WINNIPEG SEXUAL ASSAULT -- POST-LEGISLATION - ALL OFFENCES

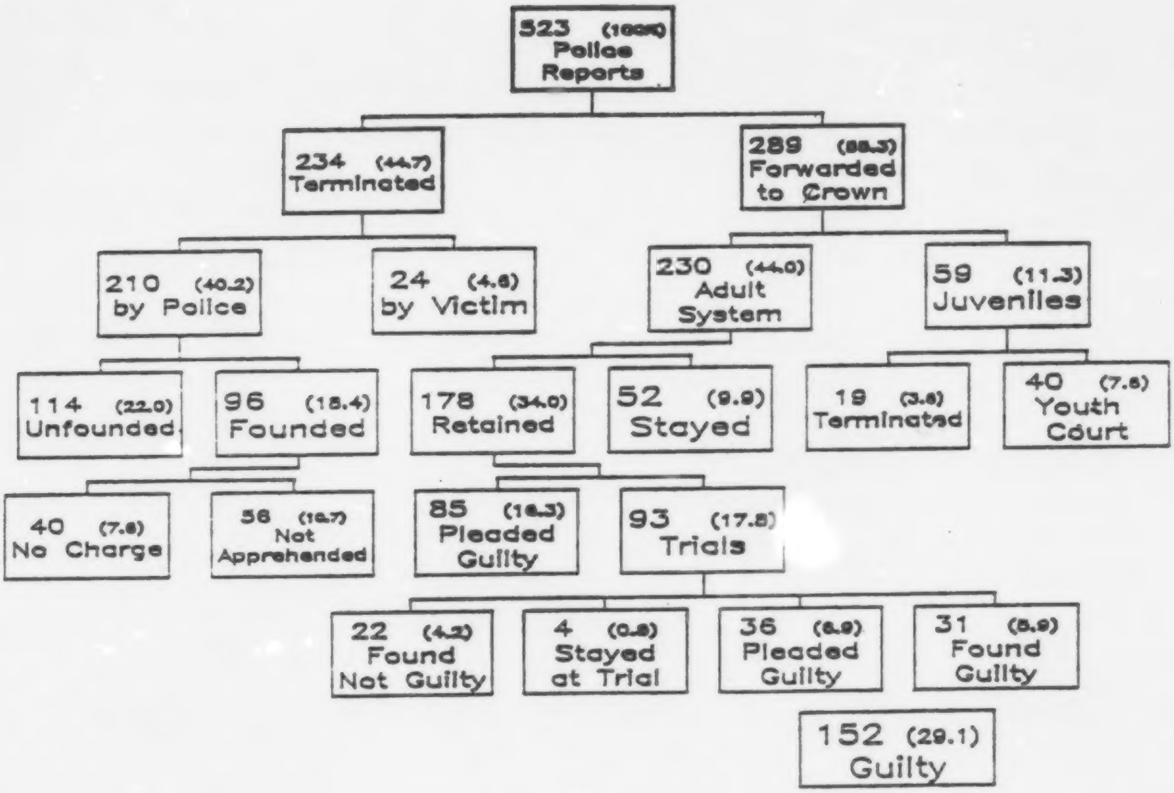
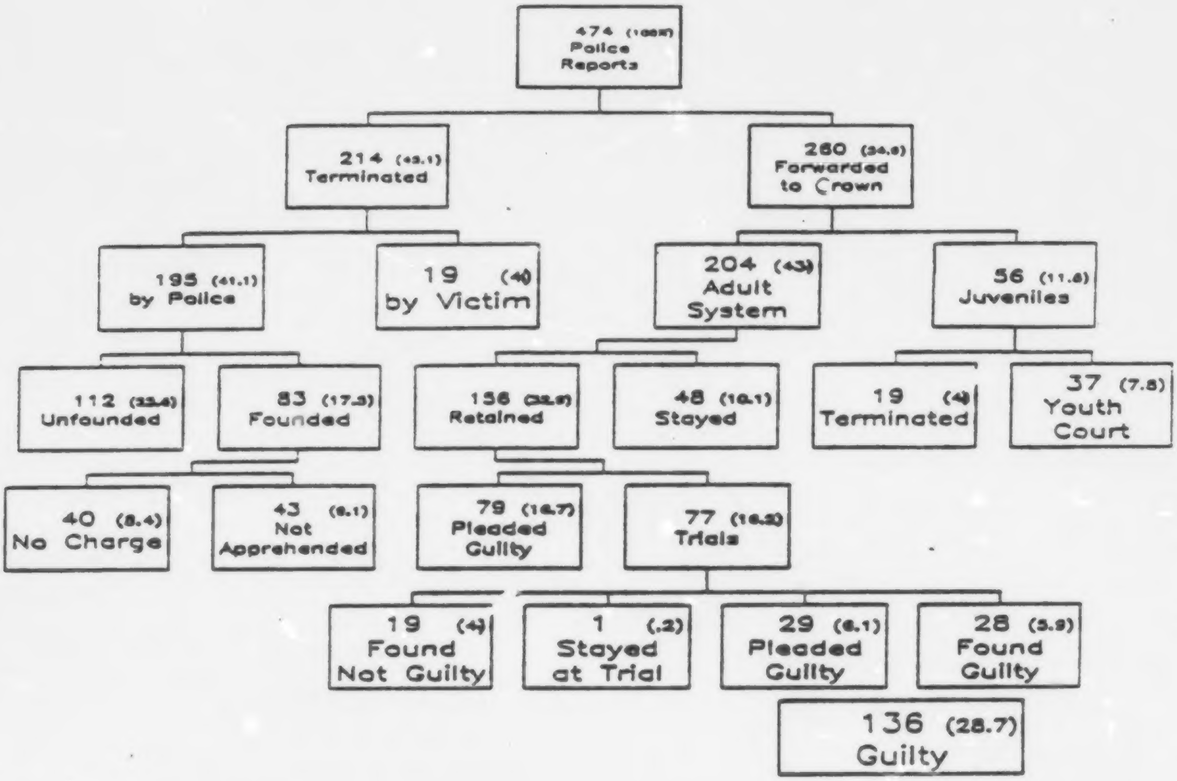


Figure 8 WINNIPEG SEXUAL ASSAULT -- POST-LEGISLATION - SEXUAL ASSAULT 246.1



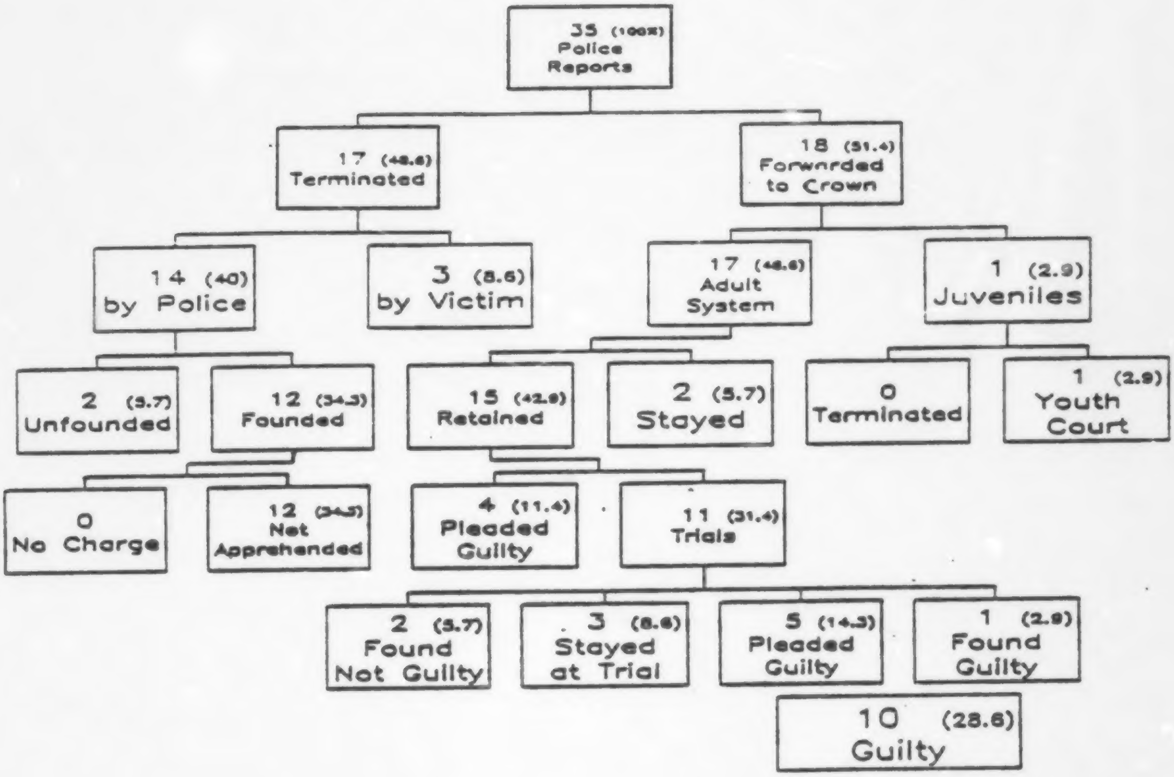
Some of these cases were initially classified by police as rape, indecent assault, buggery, gross indecency, or "other" but are included here because they were classified as sexual assault I later in the process.

Dispositions: For those convicted of sexual assault, the following dispositions were given:

Jail	55.7%
Suspended sentence	26.6%
Discharge	8.9%
Probation	7.6%
Other	1.3%

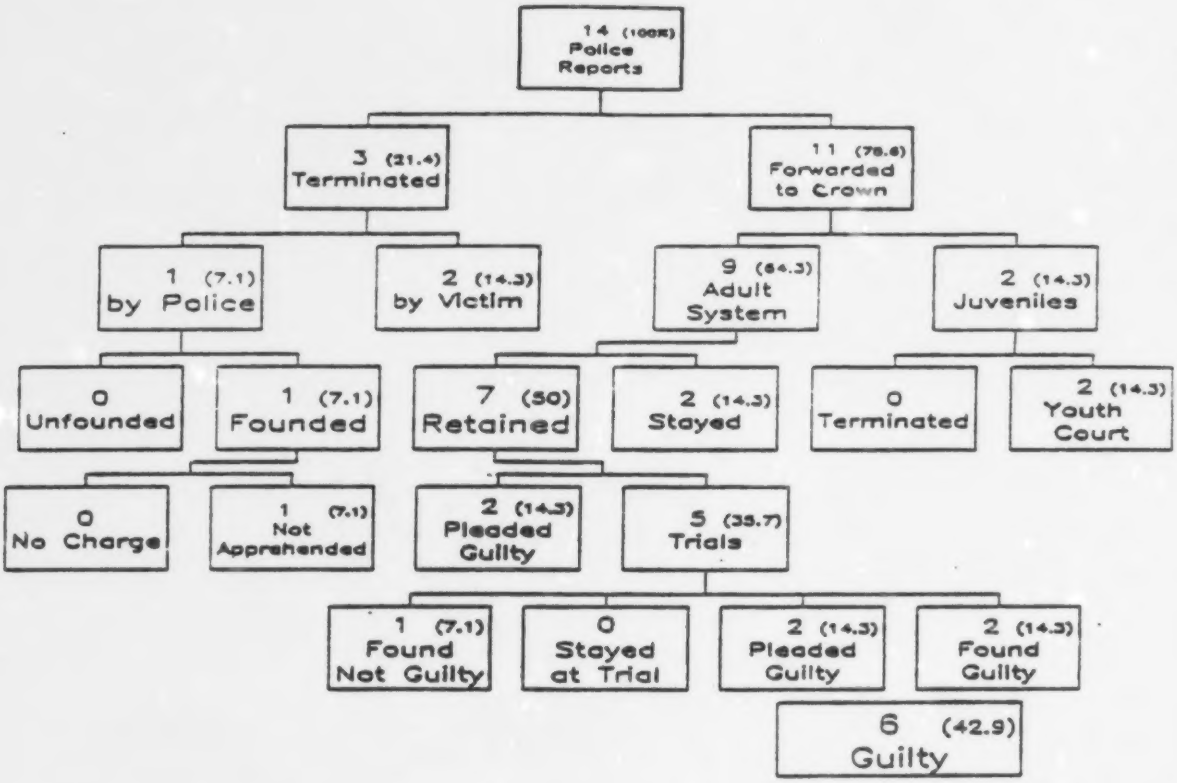
The average jail sentence was 21.8 months.

Figure 9 WINNIPEG SEXUAL ASSAULT -- POST LEGISLATION -- SEXUAL ASSAULT WITH THREATS/BODILY HARM/WEAPON 246.2



Dispositions: All of those convicted of sexual assault with threats/bodily harm/weapon received a jail sentence. The average sentence was 55.5 months.

Figure 10 WINNIPEG SEXUAL ASSAULT -- POST LEGISLATION -- AGGRAVATED SEXUAL ASSAULT 246.3



Dispositions: Only one of these cases resulted in a conviction of aggravated sexual assault. The remainder were convicted of lesser charges. The sentence received for aggravated sexual assault was 84 months.

4.3 Logistic regression analysis of charges laid and convictions

4.3.1 Methodology

The purpose of this section is to examine, in more detail, the effect of various variables (i.e., relationship between the complainant and the accused, type of sexual contact, etc.) on whether or not charges were laid at the police level and/or whether the offender was convicted. In the previous sections we examined the effects of most of these variables through two-way tables; this methodology, however, only examines variables one at a time and does not control for the effects of other variables. In this section, we wish to proceed one step further and examine the joint effect of these variables on our two dependent variables (whether or not charges were laid at the police level as well as whether or not the offender was convicted). Since each of the two dependent variables take on only two values, multivariate logistic regression is the appropriate statistical methodology (as opposed to multiple regression). In the Winnipeg study, logistic regression was run separately for the pre- and post reform periods thus allowing one to:

- test whether each variable has a significant effect on charges being laid (and the offender being convicted), holding other variables constant, within the pre- and post- periods.

- obtain numerical estimates of the increase (or decrease) in the probability of charges being laid (and of the offender being convicted) attributable to each of the explanatory variables, separately for the pre- and post reform periods.

- compare the influence of the same variables across the two periods (pre-reform versus post-reform).

The following is a description of the explanatory variables used:

OVPRNT	=1	If the accused (offender-victim relationship) was a parent (father, mother, adoptive parent, step/common-law parent or foster parent)
	=0	Otherwise
OVKNOTH	=1	If complainant (victim) had knowledge of the accused (offender), but the accused was not a parent
	=0	Otherwise

TOUCHGR	=1	If type of sexual contact involved touching/grabbing
	=0	Otherwise
ATTMPTI	=1	If type of sexual contact involved attempted intercourse
	=0	Otherwise
INITPERS	=1	If initial complaint was made personally at the police station or at the scene of the offence
	=0	Otherwise
INITOTHR	=1	If initial complaint was not made personally at the police station, at the scene of the offence or by telephone to the police
	=0	Otherwise
NOOFVICT	=1	If there was more than one complainant (victim)
	=0	If there was only one complainant (victim)
BADCHAR	=1	If there was evidence that the complainant was of "bad character" or promiscuous
	=0	If there was no evidence of "bad character"
INJURIES	=1	If there were injuries suffered by the complainant
	=0	If there were no injuries suffered by the complainant
WITNESS	=1	If there was a witness to the incident
	=0	If there was no witness
PARNTREP	=1	If offence was reported by father/surrogate or mother/surrogate
	=0	Otherwise
OTHERREP	=1	If offence was reported by someone other than mother, father or complainant (i.e., friend, boyfriend, other relative, neighbour, school, hospital, social worker, spouse)
	=0	Otherwise
VAGELT18	=1	If the complainant (victim) was less than 18 years of age at time of (first) assault
	=0	If complainant (victim) was over 17 years of age
PHYSICAL	=1	If physical force was used by the accused
	=0	If no physical force was used

VICRES	=1	If complainant (victim) resisted accused
	=0	If complainant (victim) did not resist
VALCOHOL	=1	If alcohol was present in complainant (victim)
	=0	If alcohol wasn't present in complainant (victim)
OALCOHOL	=1	If alcohol was present in accused (offender)
	=0	If alcohol was not present in accused (offender)

The last four variables were missing in a large portion of the cases thus reducing sample size considerably. Although they were included in preliminary tests, they are not reported here as it was felt that the severely reduced sample might bias the other estimates. However, if they were significant in the preliminary runs, this will be indicated in the text.

Offender characteristics (previous record, employed, married, etc.) were included in previous runs but are not reported here as the resulting sample was too small for meaningful inferences.

The next two sections will report the logistic regressions on whether charges were laid by the police and whether there was a conviction, separately for the pre- and post reform periods.

4.3.2 Logistic regression on charges laid

Logistic regression was run on CHARGELD, defined as follows:

CHARGELD	=1	If a charge was laid at police level
	=0	If a charge was not laid at police level

Table 24 presents the results of the logistic regression on CHARGELD, separately for the pre- and post reform periods. The first and second columns present the logistic regression coefficients for the pre- and post reform periods, respectively. We note that OVKNOTH, NOOFVICT, BADCHAR and INJURIES were significant in explaining whether or not charges were laid in both the pre- and post-legislation periods. Furthermore, ATTMPTI and VAGELT18 were significant at the five per cent level in the pre-legislation period only. The third and fourth columns present the estimated increase (decrease) in probability of charges being laid by the police, attributable to each significant variable for the pre- and post-legislation periods respectively. The interpretation of the third and fourth columns is as follows. Remember that for the base case, all variables equal zero. That is, the offender-victim relationship is "stranger", the type of sexual contact is sexual intercourse or other (excluding attempted intercourse and touching/grabbing), the initial complaint was by telephone to police, there was only one complainant older than 17 years of age at the time of first assault, there was no evidence of bad character, there were no injuries or witnesses, and the complainant reported the offence. Relative to the base case:

a. If the offender-victim relationship is known (other than parent), the probability of charges being laid increases by 0.26 in the pre-legislation period and by 0.44 in the post-legislation period. It should be noted that this finding is partly related to the fact that when the offender is a stranger, he is often not apprehended and therefore no charges can be laid.

b. Relative to intercourse and other, if the sexual contact was attempted intercourse, the probability of charges being laid decreases by .15 in the pre-legislation period; this variable was not significant in the post-legislation period, however. This suggests that the removal of the penetration requirement has led to more charges being laid in attempted rape cases.

c. If there is more than one complainant, the probability of charges being laid increases by .36 in the pre-legislative period and by .53 in the post-legislative period. The presence of more than one complainant provides a greater likelihood of identifying of the accused and also provides corroboration of the facts of the case.

d. Evidence of bad character decreases the probability of charges being laid by 0.21 in the pre-legislative period and by .24 in the post-legislative period. In the regression the legislation does not appear to have changed the importance of the complainant's character in the decision to charge. However, in many of these cases it was found that the complainant refused to proceed, thus affecting the laying of charges.

e. If the complainant received injuries as part of the assault, the probability of charges being laid increases by .17 in the pre-legislative period and by .15 in the post-legislative period. Injuries were somewhat less important in charging in the post reform sample; this fact may be related to removal of corroboration requirement.

f. If the complainant was less than 18 years of age, the probability of the offender being charged increased by .12 in the pre-legislative period; this variable was not significant in the post-legislative period, however.

In the preliminary logistic regression tests, OALCOHOL was significant at the five per cent level and the coefficient was positive, indicating that alcohol use by the offender increases the probability of charges being laid. Including this variable in the equation reduced the sample upon which the logistic equation was estimated by over half and it was therefore omitted in the regression equation presented here to avoid the possibility of introducing sample selection bias in the equation.

Table 24 **Logistic regression output for CHARGELD in Winnipeg sexual assault study, separately for the pre- and post-legislation periods**

Independent Variables	Logistic Regression Coefficients		Estimated Increase/Decrease	
	Pre-reform	Post reform	Pre-reform	Post reform
OVPRNT	1.009	0.697		
OVKNOTH	1.735 ****	1.898 ****	0.26	0.44
TOUCHGR	-0.554	-0.452		
ATTMPTI	-1.002 *	-0.503	-0.15	
INITPERS	0.353	0.379		
INITOTHR	-0.498	-0.068		
NOOFVICT	2.458 ****	2.278 ****	0.36	0.53
BADCHAR	-1.431 **	-1.028 ***	-0.21	-0.24
INJURIES	1.156 **	0.651 *	0.17	0.15
WITNESS	0.596	-0.129		
PARNTREP	0.759	-0.394		
OTHERREP	-0.364	-0.256		
VAGELT18	0.792 *	0.335	0.12	
Constant	-1.508	-0.530		
Chi-Square	109.12 ****	138.69 ****		
Degrees of freedom	13	13		
Sample Size	282	468		
No. of 1's	108	272		
No. of 0's	174	196		

* : $P<0.05$
** : $P<0.01$
*** : $P<0.001$
**** : $P<0.0001$

4.3.3 Logistic regression on convictions

Logistic regression was run on CONVICTED, defined as follows:

CONVICTED = 1 If offender was convicted of sexual or non-sexual offence
= 0 If offender was not convicted of a sexual or non-sexual offence (i.e., charges not laid by the police, case stayed, found not guilty at trial)

Table 25 presents the results of the logistic regression on CONVICTED, run separately for the pre- and post-legislative periods. Juvenile offenders were excluded from this analysis as those cases were not handled by adult court. The first and second columns present the logistic regression coefficients for the pre- and post-legislative periods respectively. We note that OVKNOTH, NOOFVICT, INJURIES, WITNESS and PARNTREP were significant in explaining whether or not the offender was convicted in the pre-legislative period. In the post-legislative period, OVKNOTH, INITOTHR, NOOFVICT and BADCHAR were significant in explaining whether or not the offender was convicted. The third and fourth columns present the estimated increase (decrease) in probability of offender being convicted, attributable to each significant variable, for the pre- and post-legislative periods respectively. The interpretation of the third and fourth column is as follows. Remember that for the base case, all variables equal zero. That is, the offender-victim relationship is "stranger", the type of sexual contact is sexual intercourse or other (excluding attempted intercourse and touching/grabbing), the initial complaint was by telephone to police, there was only one complainant over 17 years of age at the time of first assault, there was no evidence of bad character, there were no injuries or witnesses, and the complainant reported the offence. Relative to the base case:

a. If the offender-victim relationship is known (other than parent), the probability of the offender being convicted increases by 0.03 in the pre-legislative period and by 0.22 in the post-legislative period. It should be noted that this finding is partly related to the fact that when the offender is a stranger, he is often not apprehended and therefore cannot be convicted.

b. Relative to the case where the initial complaint was telephoned to the police, other methods of reporting the initial complaint (excluding personal reporting at the police station or at the scene of the offence) decreased the probability of a conviction by .21 in the post-legislative period; this variable was not significant in the pre-legislative period.

c. If there is more than one complainant, the probability of a conviction increases by .03 in the pre-legislative period and by .38 in the post-legislative period.

d. Evidence of bad character decreases the probability of a conviction by 0.29 in the post-legislative period; this variable was not significant in the pre-legislative period. This does not necessarily indicate a bias of the courts, as some complainants withdrew from the proceedings. For example, 14 out of 20 prostitutes in the post reform sample refused to co-operate or did not show up in court.

e. If the complainant suffered injuries as a result of the assault, the probability of a conviction increased by .04 in the pre-legislation period; this variable was not significant in the post-legislative period, however. This finding offers some evidence that the removal of corroboration may have an effect on conviction, as does the next.

f. The presence of a witness increased the probability of a conviction by .02 in the pre-legislative period; this variable was not significant in the post-legislative period.

g. If the offence is reported by one of the parents (relative to the complainant reporting the offence), the probability of a conviction increases by .03 in the pre-legislative period; this variable was not significant in the post-legislative period.

It appears that different variables affect convictions in the pre- and post-legislative periods. However, the results obtained in the pre-legislative period must be examined with caution as the overall proportion of convictions is low; in such cases, significance tends to be based on a few cases.

In the preliminary logistic regression runs, PHYSICAL was significant at the five per cent level for the pre-legislative period and the coefficient was positive, indicating that the use of physical force by the offender increases the probability of a conviction. Including this variable in the equation reduced the sample upon which the logistic equation was estimated by more than half (reducing the number of convictions to 20) and it was therefore omitted in the regression equation presented here.

Table 25 **Logistic regression output for CONVICTED in Winnipeg sexual assault study, separately for the pre- and post legislative periods**

Independent Variables	Logistic Regression Coefficients		Estimated Increase/Decrease	
	Pre-reform	Post reform	Pre-reform	Post reform
OVPRNT	1.143	0.703		
OVKNOTH	1.978 ****	1.142 ***	0.03	0.22
TOUCHGR	0.084	-0.167		
ATTMPTI	-0.060	-0.359		
INITPERS	0.177	0.284		
INITOTHR	-0.608	-1.108 *		-0.21
NOOFVICT	1.691 *	2.006 ****	0.03	0.38
BADCHAR	-0.577	-1.547 ****		-0.29
INJURIES	2.367 ****	0.496	0.04	
WITNESS	1.075 *	-0.570	0.02	
PARNTREP	1.532 *	-0.384	0.03	
OTHERREP	-0.433	0.046		
VAGELT18	0.074	-0.113		
Constant	-3.998	-1.071		

Chi-Square	69.84 ****	104.25 ****
Degrees of freedom	13	13
Sample Size	254	414
No. of 1's	38	147
No. of 0's	216	267

* : $P<0.05$

** : $P<0.01$

*** : $P<0.001$

**** : $P<0.0001$

In the logistic regression run shown in Table 25, the variables affecting court decisions cannot be separated from those affecting the police because all cases were entered into the regression.

To isolate the effect of each variable on conviction alone, the logistic regressions were rerun, excluding all the cases where charges were not laid. Table 26 presents the results of the logistic regression on CONVICTED, run separately for the pre- and post-legislative periods. Juvenile offenders were also excluded from this analysis as those cases were not handled by adult court. The first and second columns present the logistic regression coefficients for the pre- and post-legislative periods respectively. We note that only INJURIES was significant in explaining whether or not the offender was convicted in the pre-legislative period. In the post-legislative period, NOOFVICT and BADCHAR were significant in explaining whether or not the offender was convicted. The third and fourth columns present the estimated increase (decrease) in probability of offender being convicted, attributable to each significant variable, for the pre- and post-legislative periods respectively. The interpretation of the third and fourth column is as follows. Remember that for the base case, all variables equal zero. That is, the offender-victim relationship is "stranger", the type of sexual contact is sexual intercourse or other (excluding attempted intercourse and touching/grabbing), the initial complaint was by telephone to police, there was only one complainant and the complainant was more than 18 years of age at the time of first assault, there was no evidence of bad character, there were no injuries or witnesses, and the complainant reported the offence. Relative to the base case:

a. If there is more than one complainant, the probability of a conviction increases by .22 in the post-legislative period; this variable was not significant in explaining conviction in the pre-legislative period, however.

b. Evidence of bad character decreases the probability of a conviction by 0.27 in the post-legislative period; this variable was not significant in the pre-legislative period.

c. If the complainant suffered injuries as a result of the assault, the probability of a conviction increased by .18 in the pre-legislation period; this variable was not significant in the post-legislative period, however.

At first glance, it appears that there are many differences between the pre- and post-legislative periods. However, the results obtained in the pre-legislative period must be examined with caution as the overall proportion of convictions is low (N=38) in such cases, significance tends to be based on a few cases.

Table 26 Logistic regression output for CONVICTED in Winnipeg sexual assault study, separately for the pre- and post-legislative periods (omitting cases where charges were not laid)

Independent Variables	Logistic Regression Coefficients		Estimated Increase/Decrease	
	Pre-reform	Post reform	Pre-reform	Post reform
OVPRNT	-1.046	-0.206		
OVKNOTH	0.953	-0.248		
TOUCHGR	1.071	0.353		
ATTMPTI	1.190	-0.017		
INITPERS	0.200	0.100		
INITOTHR	-0.065	-1.190		
NOOFVICT	1.180	1.001 *		
BADCHAR	0.437	-1.269 **		
INJURIES	2.095 **	0.013		
WITNESS	0.628	-0.668		
PARNTREP	1.395	-0.015		
OTHERREP	-0.333	0.495		
VAGELT18	-0.402	-0.085		
Constant	-2.269	0.768		
Chi-Square	24.97 *	30.71 **		
Degrees of freedom	13	13		
Sample Size	80	218		
No. of 1's	38	147		
No. of 0's	42	71		

* : $P<0.05$
** : $P<0.01$

4.4 Analysis of length of incarceration -- Tobit estimates

4.4.1 Methodology

The purpose of this section is to examine, in more detail, the effect of various variables (i.e., offender-victim relationship, type of sexual contact, etc.) on whether or not the offender was incarcerated and, if incarcerated, the length of incarceration. In the previous sections we have examined the effects of most of these variables through two-way tables. This methodology, however, only examines variables one at a time and does not control for the effects of other variables. In this section we wish to proceed one step further and examine the joint effect of these variables on our dependent variable (length of incarceration). Since a large number of offenders were not incarcerated, Tobit regression is the appropriate statistical methodology (as opposed to multiple regression). In the Winnipeg study, Tobit regression was run separately for the pre- and post reform periods, thus allowing one to:

a. Test whether each variable has a significant effect on whether a convicted offender is incarcerated, holding other variables constant, within the pre- and post reform periods.

b. Obtain numerical estimates of the increase (or decrease) in the probability of incarceration attributable to each of the explanatory variables, separately for the pre- and post reform periods.

c. Obtain conditional estimates of the effect of each variable on length of incarceration, separately for the pre- and post reform periods.

d. Compare the influence of the same variables across the two periods (pre-reform versus post-reform).

Tobit regression therefore combines logistic regression (in explaining whether a convicted offender is incarcerated) and multiple regression (in explaining the length of incarceration) for incarcerated offenders. The dependent variable, INCARC, is defined as follows for convicted offenders only:

INCARC =0 If offender is not incarcerated
= "Months of Incarceration" if offender is incarcerated

The following is a description of the explanatory variables used:

OVPRNT	=1	If the offender-victim relationship was parent (father, mother, adoptive parent, step/common-law parent or foster parent)
	=0	Otherwise
OVKNOTH	=1	If victim had knowledge of the offender, but the offender was not a parent
	=0	Otherwise
TOUCHGR	=1	If type of sexual contact involved touching/grabbing
	=0	Otherwise
ATTMPTI	=1	If type of sexual contact involved attempted intercourse
	=0	Otherwise
INITPERS	=1	If initial complaint was made personally at the police station or at the scene of the offence
	=0	Otherwise
INITOTHR	=1	If initial complaint was not made personally at the police station, at the scene of the offence or by telephone to the police
	=0	Otherwise
NOOFVICT	=1	If there was more than one victim
	=0	If there was only one victim
BADCHAR	=1	If there was evidence that the victim was of "bad character" or promiscuous
	=0	If there was no evidence of "bad character"
INJURIES	=1	If there were injuries suffered by the victim
	=0	If there were no injuries suffered by the victim
WITNESS	=1	If there was a witness to the incident
	=0	If there was no witness
PARNTREP	=1	If offence was reported by father/surrogate or mother/surrogate
	=0	Otherwise

OTHERREP	=1	If offence was reported by someone other than mother, father or victim (i.e., friend, boyfriend, other relative, neighbour, school, hospital, social worker)
	=0	Otherwise
ORECORD	=1	If offender had a previous record
	=0	If the offender had no previous record

Table 27 presents the results of the Tobit regression on INCARC, for the post reform period. The first column presents the Tobit regression coefficients. We note that OVPRNT, OVKNOTH, TOUCHGR, ATTMPTI, VAGELT18 and ORECORD were significant in explaining incarceration (and length of incarceration). The second column presents the estimated increase (decrease) in probability of incarceration, attributable to each significant variable. The third column presents the estimated effect of each significant variable on length of incarceration (for incarcerated offenders). The interpretation of the second and third columns is as follows. Remember that for the base, all variables equal zero. That is, the offender-victim relationship is "stranger", the type of sexual contact is sexual intercourse or other (excluding attempted intercourse and touching/grabbing), the initial complaint was by telephone to police, there was only one victim 18 years of age or over, there was no evidence of bad character, there were no injuries or witnesses, the offender had no previous record, and the victim reported the offence. Relative to the base case:

a. If the offender-victim relationship is parent, the probability of the offender being incarcerated decreases by 0.40, while if the offender-victim relationship is known (other than parent), the probability of incarceration decreases by 0.50. Given that the offender is incarcerated, an offender-victim relationship of parent is expected to decrease length of incarceration by 14.43 months, while an offender-victim relationship of known (other than parent) is expected to decrease length of incarceration by 18.31 months, all relative to offender-victim relationship of "stranger".

b. Relative to intercourse and other, if the sexual contact is touching/grabbing the probability of incarceration decreases by 0.57, while attempted intercourse decreases the probability of incarceration by 0.22. Given that the offender is incarcerated, relative to intercourse and other, touching and grabbing is expected to decrease the length of incarceration by 20.71 months, while attempted intercourse is expected to decrease the length of incarceration by 8.06 months.

c. If the victim is less than 18 years of age, the probability of incarceration increases by 0.28. Given that the offender is incarcerated, the fact that the victim is less than 18 years of age is expected to increase the length of incarceration by 10.08 months, relative to the case where the victim is 18 years of age or more.

d. If the offender has a previous record, the probability of incarceration increases by 0.36. Given that the offender is incarcerated, the presence of a previous record is expected to increase the length of incarceration by 13.12 months.

Table 28 presents the results of the Tobit regression on INCARC, for the pre-reform period. The first column presents the Tobit regression coefficients. We note that the equation is not significant in explaining incarceration (and length of incarceration). This is undoubtedly due to the small sample size (N=38) available for the estimation of this equation, of which only 21 were incarcerated. Z-tests comparing the coefficients for the two periods (pre-reform versus post-reform) revealed no significant differences; this again is not surprising given the small sample size for the prereform period.

Table 27 Tobit regression output for INCARC in Winnipeg for the post reform period

Independent Variables	Tobit Regression Coefficients	Estimated Increase/Decrease in Probability of Incarceration	Estimated Increase/Decrease in No. of Months of Incarceration
OVPRNT	-25.213 **	-0.40	-14.43
OVKNOTH	-31.999 ****	-0.50	-18.31
TOUCHGR	-36.198 ****	-0.57	-20.71
ATTMPTI	-14.083 *	-0.22	-8.06
INITPERS	-6.119		
INITOTHR	-3.393		
NOOFVICT	8.622		
BADCHAR	-7.440		
INJURIES	10.849		
WITNESS	1.273		
PARNTREP	-13.558		
OTHERREP	-11.820		
ORECORD	22.923 ****	0.36	13.12
VAGELT18	17.622 *	0.28	10.08
Constant	429.86 ****		
Chi-Square	429.86 ****		
Degrees of Freedom	14		
Sample Size	144		
No. > 0	90		
No. of 0's	54		

* : P<0.05

** : P<0.01

**** : P<0.0001

Table 28 **Tobit regression output for INCARC in Winnipeg for the prereform period**

		Estimated Increase/Decrease in	
Independent Variables	Tobit Regression Coefficients	Probability of Incarceration	No. of Months of Incarceration
OVPRNT	44.543		
OVKNOTH	-7.433		
TOUCHGR	-47.737		
ATTMPTI	-45.375		
INITPERS	-49.834		
INITOTHR	18.360		
NOOFVICT	-35.621		
BADCHAR	6.218		
INJURIES	6.618		
WITNESS	7.986		
PARNTREP	30.322		
OTHERREP	12.405		
ORECORD	37.619		
VAGELT18	5.029		
Constant	-11.025		

Chi-Square	15.00
Degrees of Freedom	14
Sample Size	38
No. > 0	21
No. of 0's	17

* : $P<0.05$
** : $P<0.01$
**** : $P<0.0001$

Note: The last two columns are not included because no variable was statistically significant.

4.5 Profile of complainants

Profiles of complainants from the police files will be discussed in this subsection. Unless otherwise indicated by (SAC), text and tables refer to police data. Profile data will also be presented from the sexual assault centre and will be discussed under each heading when relevant. Only when tables are labelled as pertaining to the sexual assault centre will they apply to those data. Wherever it is possible, a comparison will be shown between the two data sets. Data from the sexual assault centre consist of 60 cases from the prereform period and 57 cases from the post reform period (as described previously in the chapter on methodology).

4.5.1 Gender

Most of the complainants were female (Table 29). In the prereform period (N=317), 295 or 93.1 per cent of the complainants were female and in 1984-85 (N=528), 502 or 95.1 per cent were female. The difference was not statistically significant at the .05 level.

Table 29 **Gender of complainant**
Pre and post reform data (per cent)

	PRE N=317	POST N=528
Male	6.9	4.9
Female	93.1	95.1

Z-Statistic	Significance
1.23	.2224

4.5.2 Age

In 1981-82, complainants under age 25 accounted for 73.9 per cent of the cases (Table 30). The modal category was 18 to 24 (31.2 per cent), followed by under 13 (23.6 per cent), and 14 to 17 (19.1 per cent). Complainants were younger in 1984-85, with 85.1 per cent of the complainants under age 25. The modal category was under 13 years (49.4 per cent) followed by 18 to 24 (18.5 per cent) and 14 to 17 (17.2 per cent). Differences were statistically significant at the .05 level. It is difficult to determine whether the increased number of child sexual assault cases being reported is due to the new legislation, or whether it reflects a broader concern with reporting child sexual abuse.

Table 30 **Complainant's age**
Pre and post reform data (per cent)

Age	PRE N=314	POST N=518
13 and under	23.6	49.4
14 to 17	19.1	17.2
18 to 24	31.2	18.5
25 to 29	10.8	8.3
30 to 39	9.6	4.1
40 to 49	2.5	1.2
50 to 59	2.2	.6
60 and over	1.0	.8

Chi-Square	D.F.	Significance
64.57	7	0.0000

Approximately one-third of the information on complainants' ages was missing in files from the sexual assault centre. Available data were dissimilar to those of the police (Table 30A). In the 1981-82 sample, complainants under 14 accounted for 32.4 per cent, but in the post reform period, young complainants decreased to 5.3 per cent. Two factors explain this difference. First, younger complainants are now being referred to and handled by the child welfare agencies, which have become more experienced at recognizing and dealing with sexual offences since 1981-82. Second, protocol on dealing with offences pertaining to complainants under age 18 requires that they be reported to CFS or the police. The sexual assault centre sample did not include one-time contacts that were referred elsewhere.

Table 30A **Complainant's age at time of offence pre- and post reform data** (per cent) (SAC)

Age	PRE N=34	POST N=38
Under 14 years	32.4	5.3
14 - 26 years	47.1	78.9
27 years and over	20.6	15.8

Chi-Square	D.F.	Significance
10.37837	2	0.0056

4.5.3 Marital Status

As seen in Table 31, a considerable number of cases had no information in the files on the complainant's marital status. In cases for which information was available, the largest percentage of complainants in both sets of data (police and SAC) and in both time periods were single. The rise of single complainants in the police data from the post reform period reflects the increase of children in the sample. An anomaly was common-law status in the sample from the sexual assault centre, which rose substantially in the post reform period.

Table 31 **Complainant's marital status Pre and post reform data** (per cent)

	POLICE		SEXUAL ASSAULT CENTRE	
	PRE N=214	POST N=432	PRE N=40	POST N=40
Married	12.1	3.5	15.0	2.5
Single	77.1	90.3	67.5	62.5
Divorced/Separated	3.8	3.9	12.5	7.5
Common-Law	6.5	2.3	5.0	27.5

	Chi-Square	D.F.	Significance
POLICE	29.27	4	0.0000
SEXUAL ASSAULT CENTRE	10.37912	3	0.0156

4.5.4 Occupational status

Occupational status was missing in a substantial number of cases in both time periods. A large percentage of the complainants were children, especially in the 1984-85 sample (66.6 per cent). In most cases, their parents' occupations was not recorded in files, so occupation was coded for the child as unemployed or student, depending on age. These data could not provide the study with information about the social class of complainants.

4.5.5 Relationship to accused

In 1981-82 the majority of the accused were strangers (63.1 per cent). In 1984-85, only 34.5 per cent of the accused were strangers to the complainant (Table 32). In 43.2 per cent of the cases, the offender was a "known other" -- someone known to the complainant who was not a parent. The differences between the two time periods were statistically significant at the .05 level. This difference partly reflects the increased number of child sexual assault cases being reported to the police since 1983. These cases are more likely to involve parents and others known to the complainant. However, even for adult complainants there was a decrease in the proportion of "stranger" assaults in the post reform period. A more complete breakdown of relationship is shown in Table 33. This finding suggests that since the law reform, complainants are more willing to report assaults that are not stereotypical (i.e, stranger appearing out of the bushes). It is difficult to separate the social effects from the legal impact, but the courts are undoubtedly processing more of these cases.

Table 32 **Relationship between complainants and accused**
Pre and post reform data (collapsed)

	PRE N=309	POST N=516
Stranger	63.1	34.5
Parent/Surrogate	7.1	22.3
Known Other	29.8	43.2

Chi-Square	D.F.	Significance
70.91	2	0.00

Data from the sexual assault centre did not indicate an increase in known offenders (Table 32A). This likely resulted from the manner of selection, that differed between the two agencies. Whereas for the police sample cases were selected on the basis of charges, in the sample from the sexual assault centre relationship was the criteria for many excluded cases (i.e., we excluded incest cases based on relationship, although they might have resulted in a charge of sexual assault in the police sample).

Table 32A Offender-victim relationship
Pre and post reform data (per cent)

	POLICE		SEXUAL ASSAULT CENTRE	
	PRE N=309	POST N=516	PRE N=57	POST N=56
Stranger	63.1	34.5	45.6	53.5
Known	36.9	65.5	54.4	46.4
	Z Statistic	Significance	Z Statistic	Significance
	7.99	0.00001	-.85	.3954

Table 33 **Relationship (detailed)**
Pre and post reform data (per cent)

	PRE N=309	POST N=516
Stranger	56.3	29.3
Stranger (Casually Known) *	6.8	5.2
Acquaintance **	12.0	11.4
Neighbour	3.2	2.7
Close friend/Boyfriend	1.6	1.8
Ex-boyfriend	3.6	1.2
Family Friend	2.9	5.0
Father	5.5	10.9
Step/Common-Law Parent	1.6	9.7
Adoptive Parent	--	1.2
Foster Parent	--	.6
Grandparent	--	.8
Sibling	.3	3.1
Other Relative	2.6	10.9
Employer/Teacher	.3	2.1
Co-Worker/Classmate	1.0	1.0
Husband	.3	.4
Ex-Husband	--	.2
Common-Law Husband	.3	.4
Baby-sitter	1.0	1.7
Other	.6	.6

* Stranger (Casually Known) pertains to someone the complainant is not acquainted with, but is able to identify (for example: bus driver, apartment building manager).

** Acquaintance includes persons known to the complainant but not considered an intimate or close friend, including: boyfriend's uncle, girlfriend's father, landlord, caretaker.

4.5.6 Summary

There was no significant change in the gender of complainants. There were substantially more child complainants in the post reform period. In part, because of this difference in age, significantly more of the post reform assaults involved parents or "known others."

4.6 Profile of accused

4.6.1 Gender

In the police data, the overwhelming majority of accused in both time periods were male. In 1981-82, 304 (99.3 per cent) of the accused were male and in 1984-85, 464 (98.9 per cent) were male. All offenders in the sample from the sexual assault centre were male, but data were too sparse to provide a meaningful description on their ages, occupations, or marital status.

4.6.2 Age

In 1981-82, the age of the accused at the time of first offence ranged from eight[8] to 78 years (Table 34). More than half (60.4 per cent) the accused were under 30, 23.3 per cent were aged 30 to 39, and 16.3 per cent were over 39. In 1984-85, the offender's age ranged from eight[9] to 72 years. In 1984-85, 52.4 per cent of accused were under age 30, while 22.9 per cent were aged 30 to 39, 14.4 per cent were 40 to 49, and 10.3 per cent over 49 years of age. Age differences between the two time periods were not statistically significant at the .05 level.

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[8] The eight-year-old and his friend took a five-year-old girl into the bushes and fondled her. Both boys received warnings from police and were referred to Child and Family Services.

[9] The eight-year-old in the post-reform sample had intercourse with his two-year-old sister. The boy had a juvenile record. A charge of sexual intercourse with a female under 14 was stayed.

Table 34 **Age of accused**
Pre and post reform data (per cent)

Age	PRE N=159	POST N=340
13 and under	8.2	3.8
14 to 17	9.4	14.1
18 to 24	23.9	17.4
25 to 29	18.9	17.1
30 to 39	23.3	22.9
40 to 49	10.1	14.4
50 to 59	3.1	7.1
60 and over	3.1	3.2

Chi-Square	D.F.	Significance
12.85	7	0.0759

4.6.3 Marital status

Information on the marital status of the accused was missing for a substantial number of cases in both time periods. In cases for which information was available in 1981-82, 56.9 per cent of the accused were single or divorced, while 35 per cent were married or involved in a common-law relationship (Table 35). In 1984-85, 46.9 per cent were single or divorced, while 47.2 per cent were married or involved in a common-law relationship. This may be because of the greater number of child complainants, (i.e., married or common-law fathers abusing their children). Differences were statistically significant at the .05 level.

Table 35 **Marital status of accused**
Pre and post reform data (per cent)

	PRE N=137	POST N=322
Single	54.7	39.8
Married	27.7	36.3
Divorced	2.2	7.1
Separated	5.1	5.0
Common-Law	7.3	10.9
Other	2.9	0.9

Chi-Square	D.F.	Significance
14.90	5	0.0108

4.6.4 Occupational Status

Occupational data were missing for almost half of the accused. In cases where information was available in 1981-82, 26 per cent of the accused were unemployed (Table 36). In 1984-85, where information was available, unemployed accused comprised 32.8 per cent. There were also more professionally employed accused in the later time period. Most accused in both time periods were working in either unskilled or semi-skilled jobs. The differences were not statistically significant at the .05 level.

Table 36 **Occupation of accused**
Pre and post reform data (per cent)

	PRE N=131	POST N=293
Employed/Professional	0.8	6.1
Employed/Semi-Skilled	27.5	23.2
Employed/Unskilled	27.5	23.9
Student	18.3	14.0
Unemployed	26.0	32.8

Chi-Square	D.F.	Significance
9.46	4	0.0504

4.6.5 Previous criminal record

Most of the information was missing on the prior criminal record of the accused. For 1981-82 cases in which information was available, 120 accused (81.6 per cent) had juvenile or criminal records. In 1984-85, 183 accused (60.8 per cent) out of 301 had previous records. Although differences appear to be statistically significant, it is possible that some files where there was no information actually have omissions about the prior record of the accused. Where data were missing on prior record, the data collections instrument was coded "no information" rather than "no record". Therefore, these percentages are almost certainly an overestimate of the total percentage of persons with previous criminal records because information on criminal history is more likely to be recorded for accused with prior records. For example, it is uncommon to find a statement in the file that says "the accused had no criminal record". Nineteen (17 per cent) of the prior offences recorded for accused in the prereform period and 36 (21.7 per cent) in the post reform period were of a sexual nature.

Table 36A Offenders have previous criminal record
Pre and post reform data (per cent)

	PRE N=147	POST N=301
Yes	81.6	60.8
No	18.4	39.2

Z-Statistic	Significance
4.43	<.001

4.6.6 Summary

There was no significant change in the gender or ages of the accused between the two time periods. There were more accused who were married or living common-law in the post reform sample, corresponding with the greater number of child complainants in 1984-85. There were also more professionally employed as well as unemployed accused in the post reform period.

4.7 Profile of offence

4.7.1 Nature of contact

In 1981-82, as seen in Table 37, the most frequent type of sexual contact was touching and grabbing (42.6 per cent). This was followed by genital/anal intercourse (34.1 per cent) and other (any combination of: touching and grabbing, fellatio, cunnilingus, masturbation or digital penetration, 17.8 per cent). In 1984-85, touching and grabbing was also most frequent (39.1 per cent) followed by genital/anal intercourse (30.9 per cent) and other (20.3 per cent). The differences were not statistically significant.

The slight decrease in intercourse in the later time period may be a result of the shift from rape to sexual assault in the Criminal Code, that reduced the emphasis on penetration in defining a sexual assault. It also reflects the larger number of child complainants in the 1984-85 data, as children were more likely than older persons to be victims of touching, fondling and grabbing.

Table 37 **Type of sexual contact**
Pre and post reform data (per cent)

	PRE N=305	POST N=501
Genital/Anal Intercourse and Other	34.1	30.9
Touching/Fondling, Grabbing	42.6	39.1
Other	17.8	20.3
Attempted Genital/Anal Intercourse	5.5	9.6

Chi-Square	D.F.	Significance
5.63	3	0.1303

As seen in Table 37A, the sexual assault centre data indicated that most of the cases in both time periods involved intercourse. However, this information was not available in 22 of the 1981-82 files.

Table 37A **Type of sexual contact**
Pre and post reform data (per cent)

	POLICE		SEXUAL ASSAULT CENTRE	
	PRE N=305	POST N=501	PRE N=38	POST N=55
Genital/Anal Intercourse	34.1	30.9	81.6	87.2
Touching/Fondling /Grabbing	42.6	39.1	--	--
Other	23.3	29.9	18.4	12.8

4.7.2 Non-sexual offences

In 19.2 per cent of the cases in the prereform period and 14.6 per cent of the post reform cases, another offence occurred as well as the sexual offence. Differences between time periods were within 3 per cent and were not statistically significant (Table 38).

Table 38 **When did other offence occur?**
Pre and post reform data (per cent)

	PRE N=57	POST N=74
Prior to Assault	24.6	23.0
Concurrent With Assault	49.1	52.7
After Assault	26.3	24.3

Chi-Square	D.F.	Significance
0.165	2	0.9205

4.7.3 Disclosure

In 1981-82, the complainant most often made the first disclosure of assault to the police (26.4 per cent) followed by "other" (18.9 per cent) that included store and hotel clerks, motorists, passers-by, co-workers, neighbours, security personnel (Table 39). In 1984-85, the first disclosure was made to the mother (27.9 per cent), followed by police (20.6 per cent), that was followed by "other" (12.4 per cent). Pre and post-differences were significant at the .001 level. The larger proportion of cases being reported to parents, especially "mother" reflects the larger proportion of child complainants in the post reform sample.

Table 39 To whom complainant first disclosed assault
Pre and post reform data (per cent)

	PRE N=296	POST N=499
Mother (Surrogate)	15.5	27.9
Father (Surrogate)	4.1	1.8
Sibling	5.7	5.4
Other Relative	5.4	
Teacher	1.0	2.6
Friend	16.6	11.4
Social Worker	5.1	13.0
Doctor (Medical Person)	1.4	1.4
Police	26.4	20.6
Other	18.9	12.4

Chi-Square	D.F.	Significance
43.14	9	0.0000

Table 40 shows that 88.6 per cent of the initial disclosures in the prereform period were made within 48 hours of the assault. However, for the post reform period, only 67.4 per cent were made within 48 hours. The differences were significant at the .001 level. This is due to the larger number of child complainants who are less likely to disclose an assault immediately. When disclosure was compared separately for children and adult complainants, the differences were significant between the two time periods for children (Table 41), but not for adults.

Table 40 **When disclosure was made**
Pre and post reform data (per cent)

	PRE N=298	POST N=445
Immediately (<48 hours)	88.0	67.4
49 hours - < 1 month	6.0	9.7
1 - 12 months	3.0	9.2
Over 1 year	2.4	13.7

Chi-Square	D.F.	Significance
48.73	3	0.0000

Table 41 **When disclosure of complainants under 18 was made**
Pre and post reform data (per cent)

	PRE N=123	POST N=278
Immediately (<48 hours)	78.0	50.0
49 hours - < 1 month	9.8	14.0
1 - 12 months	7.3	14.4
Over 1 year	4.9	21.6

Chi-Square	D.F.	Significance
30.62	3	0.0000

In 1981-82, the majority of cases (78.3 per cent) were reported to the police within 24 hours of the assault (Table 42). An additional 6.1 per cent were reported within 48 hours. However, reporting was delayed from eight days to one year in 7.3 per cent of the cases. In 1984-85, 50.0 per cent of the cases were reported to the police within 24 hours of the assault with an additional 6.8 per cent reported within 48 hours. Reporting was delayed from eight days to a year in 19.7 per cent of the cases and for over one year in 13.6 per cent. Differences between the pre- and post-legislation periods were significant at the .001 level. This may reflect both the reduced emphasis on recency of complaint under Bill C-127 and the increase in child complainants. When this variable was compared separately for children and adults, the differences between the two time periods were significant for children (Table 42), but not for adults.

Table 42 **When police report was made**
Pre and post reform data (per cent)

	PRE N=313	POST N=486
Immediately (<24 hours)	78.3	50.0
25 - 48 hours	6.1	6.8
49 hours - 7 days	5.8	9.9
8 days - < 1 month	3.5	7.4
1 - 12 months	3.8	12.3
Over 1 year	2.5	13.6

Chi-Square	D.F.	Significance
74.19	5	0.0000

Table 43 **When police report for complainants under 18 was made**
Pre and post reform data (per cent)

	PRE N=131	POST N=312
Immediately (<24 hours)	65.6	28.8
25 - 48 hours	8.4	8.7
49 hours - 7 days	8.4	13.1
8 days - < 1 month	4.6	10.3
1 - 12 months	7.7	18.6
Over 1 year	5.4	20.6

Chi-Square	D.F.	Significance
57.16	5	0.0000

In both time periods, offences were most often reported by the complainant (59.2 per cent in 81-82 and 35.7 per cent in 84-85). The difference between the two time periods largely reflects the increased number of child complainants who were more likely to have offences reported by parents, and it was statistically significant at the .001 level (Table 44).

Table 44 **Who reported offence to police? Pre and post reform data**

	PRE N=309	POST N=513
Complainant	59.2	35.7
Spouse	1.0	0.2
Friend	2.6	2.9
Father (Surrogate)	3.6	4.1
Mother (Surrogate)	12.3	20.1
Other Relative	1.9	3.1
School	1.0	2.1
Hospital	1.0	2.9
Social Worker	4.5	20.5
Other	12.5	8.4

Chi-Square	D.F.	Significance
77.16	9	0.0000

In 1981-82, the majority of the offences (78.9 per cent) were reported by telephone to police. Only 6.2 per cent were reported to the police in person. In 1984-85 the corresponding figures were 82.4 per cent and 8.4 per cent (Table 45). The differences between the two periods were not statistically significant at the .05 level.

Table 45 **How was initial complaint made to police? Pre and post reform data**

	PRE N=309	POST N=513
Personally to Police	6.2	8.4
Telephone Police	78.9	82.4
Scene of Offence	4.9	2.7
Other	10.1	6.5

Chi-Square	D.F.	Significance
7.23	3	0.0649

4.7.4 Place of offence

In 1981-82, offences most commonly occurred in a public place (26.8 per cent). In 1984-85, the most common place of offence was the shared residence of the complainant and accused (22.3 per cent), followed by 18.8 per cent in a public place (Table 46). Differences were statistically significant at the .001 level and reflect the greater likelihood of child victims sharing a common residence with their assailant.

Table 46 **Place of the offence Pre and post reform data**

	PRE N=306	POST N=512
Complainant's Residence	18.0	13.5
Accused's Residence	11.8	18.6
Common Residence	6.5	22.3
Other Residence	2.9	2.7
Various Residences	1.3	3.5
Vehicle	11.4	8.0
Other Place	21.2	12.7
Public Place	26.8	18.8

Chi-Square	D.F.	Significance
57.43	7	0.0000

When the table is collapsed it is clear that the majority of offences occurred at a residence in both time periods. Offences typically occurred in the home of the accused or complainant. Data from the sexual assault centre indicate a substantial increase in offences occurring in vehicles in 1984-85 (Table 46A).

Table 46A **Place of the offence**
Pre and post reform data (per cent)

	POLICE		SEXUAL ASSAULT CENTRE	
	PRE	POST	PRE	POST
	N=306	N=512	N=55	N=50
Residence	40.5	60.6	61.8	44.0
Vehicle	11.4	8.0	5.5	22.0
Public Place	48.0	31.5	32.7	34.0

Chi-Square	D.F.	Significance	Chi-Square	D.F.	Significance
30.91	2	0.0000	6.95	2	0.0310

4.7.5 Presence of witnesses

There were no significant differences in the two periods with respect to presence of witnesses (Table 47). However, when this variable was compared separately for children and adults, the differences between the two time periods were significant for children, but not for adults (Table 48). This is consistent with the privacy involved in child sexual abuse, which comprises a large proportion of post reform cases.

Table 47 **Presence of witnesses**
Pre and post reform data (per cent)

	PRE N=312	POST N=520
Yes	20.8	17.9
No	79.2	82.1

Z-Statistic	Significance
1.05	0.2938

Table 48 **Presence of witnesses for complainants under 18**
Pre and post reform data (per cent)

	PRE N=132	POST N=338
Yes	31.1	18.6
No	68.9	81.4

Z-Statistic	Significance
2.92	0.0035

4.7.6 Force used

In the majority (60.8 per cent) of the 296 cases in 1981-82 where information was available, complainants claimed that physical force was used by the accused. In 1984-85, the use of physical force was reported in 53 per cent of the cases (Table 49). Differences between the time periods were statistically significant at the .05 level. The most common form of force (Table 50) was grabbing and restraining (71.9 per cent in 1981-82; 66.4 per cent in 1984-85).

Table 49 **Physical force used by the accused**
Pre and post reform data (per cent)

	PRE N=296	POST N=468
Yes	60.8	53.0
No	39.2	47.0

Z-Statistic	Probability
2.12	0.0340

Table 50 **Nature of force used**
Pre and post reform data (per cent)

	PRE N=178	POST N=247
Choking	7.9	8.1
Slapping, Punching, Biting	56.7	53.8
Grabbing, Restraining	71.9	66.4
Verbal Intimidation	16.9	18.6
Other	9.0	18.6

Note: Percentages add to more than 100 per cent because more than one response could be given in each case.

4.7.7 Resistance by complainants

In both time periods, most complainants (70.2 per cent in 81-82, and 68.3 per cent in 84-85), reported that they resisted the advances of the accused (Table 51). In 1981-82, the most common form of resistance was a combination of verbal and physical (54.6 per cent), while 31.1 per cent used physical resistance only. In 1984-85, 55.9 per cent of the complainants used both verbal and physical resistance while 22.6 per cent used only verbal resistance (Table 52). The difference was significant at the .05 level. Less physical force and greater verbal coercion was used in the post reform period. In part, this is likely due to the increased number of child complainants. However, when type of resistance was compared separately for adults, there was more verbal and less physical resistance in the 1984-85 sample and the difference was significant at the .01 level (Table 53). This could be due to an attitudinal change in complainants, who may be more likely to report sexual assaults of a non-stereotypical nature since the law was amended.

Table 51 **Resistance by complainant**
Pre and post reform data (per cent)

	PRE N=282	POST N=435
Yes	70.2	68.3
No	29.8	31.7

Z-Statistic	Significance
0.55	0.5824

Table 52 **Type of resistance**
Pre and post reform data (per cent)

	PRE N=196	POST N=297
Verbal	14.3	22.6
Physical	31.1	21.5
Both	54.6	55.9

Chi-Square	D.F.	Significance
8.50	2	0.0143

Table 53 **Type of resistance by complainants over 18**
Pre and post reform data (per cent)

	PRE N=128	POST N=125
Verbal	14.8	22.6
Physical	29.7	14.4
Both	55.5	63.2

Chi-Square	D.F.	Significance
9.26	2	0.0098

4.7.8 Injuries sustained by complainant

Injuries were present in only 19.9 per cent of cases in 1984-85, while 24.3 per cent of the 1981-82 complainants were injured (Table 54). This difference was not significant at the .05 level.

Table 54 **Any injuries suffered by complainant?**
Pre and post reform data (per cent)

	PRE N=313	POST N=522
Yes	24.3	19.9
No	75.7	80.1

Z-Statistic	Significance
1.48	0.1388

4.7.9 Medical attention required

In 1981-82, 38.9 per cent of the complainants received medical attention while 47.0 per cent of the 1984-85 complainants received medical attention (Table 55). Differences on this variable were statistically significant at the .05 level. This difference, and the fact that considerably more complainants received medical attention than were noted as having been injured, suggests that both complainants and the police are more likely now to recognize the need for medical attention and the importance of corroborative medical evidence in sexual assault cases. This is particularly true for children. When medical attention was compared separately for children and adults, differences were significant for children, but not for adults (Table 56).

Table 55 **Did complainant get medical attention? Pre and post reform data** (per cent)

	PRE N=303	POST N=491
Yes	38.9	47.0
No	61.1	53.0

Z-Statistic	Significance
-2.23	0.0258

Table 56 **Did complainant under 18 get medical attention? Pre and post reform data** (per cent)

	PRE N=125	POST N=314
Yes	36.0	50.0
No	64.0	50.0

Z-Statistic	Significance
-2.66	0.0078

4.7.10 Use of alcohol

Information about alcohol use was missing in half the prereform cases and about one-third of the post reform cases. For cases for which information was available, there were significant differences between the pre- and post reform periods in the extent of alcohol use (Table 57). In part, this difference is due to the greater number of child complainants who are less likely to use alcohol than adult complainants.

Table 57 **Use of alcohol**
Pre and post reform data (per cent)

	PRE N=145	POST N=327
By Complainant and Accused	37.2	20.2
By Complainant, not Accused	11.7	3.7
By Accused, not Complainant	22.1	21.1
By neither Complainant nor Accused	29.0	55.0

Chi-Square	D.F.	Significance
36.68	3	0.0000

4.7.11 Summary

Although the most common type of sexual offence involved touching and grabbing, a slightly larger percentage of offences in the earlier time period involved genital intercourse. This may be a result of the de-emphasis on penetration in defining sexual assaults in the post reform period.

Offences were typically reported to police on the telephone by the complainant, but in the post reform period there was an increase in mothers and social workers reporting. This is due to the increase in child complainants in the post reform period. Reporting usually occurred within the first 24 hours of the offence (or last offence if continuous). More reports were delayed in the post reform period. This could be a result of the abrogation of the rules relating to "recent complaint".

Physical force was used less often in the post reform period and a smaller percentage of complainants were injured in that group. For both resistance and presence of injuries, the decrease was due to the increased number of child victims who are less likely to resist an authority figure, particularly a parent or parental surrogate, and who are less likely to be injured.

Most offences in both time periods took place in a residence. In the post-reform sample there was a vast increase in offences occurring in a common residence, reflecting the greater likelihood of child victims sharing a residence with their assailant. The greater number of children in the 1984-85 sample is also the reason that there was less involvement of alcohol use in that time period, particularly by complainants.

4.8 Nature of contact with sexual assault program

In approximately one-third of the cases in the prereform period, the sexual assault centre was contacted within 48 hours of the offence occurring. In another third, contact was made later, but within the week. Over two-thirds of the post reform sample reported the incident to the agency within 48 hours. These differences were highly significant, suggesting that delays in contacting the sexual assault program are dropping dramatically (Table 58).

Table 58 How soon after assault agency was contacted
Pre and post reform data (per cent)

	PRE N=59	POST N=53
Immediately to 48 hours	32.2	67.9
49 hours - 7 days	32.2	7.5
Longer than 7 days	35.6	24.5

Chi-Square	D.F.	Significance
16.64585	2	0.0002

The difference in the promptness of contact with the sexual assault program can be explained, in part, by a change in hospital procedure. In the prereform period, the agency was notified predominantly by victims (64.4 per cent). The hospital was the initial contact in 11.9 per cent of the cases (Table 59). There was a substantial increase in contacts made directly by the hospital to the sexual assault centre in the post reform period (45.6 per cent), while victim-initiated contacts decreased to 38.6 per cent of the cases.

The rise in hospital contacts from one time period to the next was likely the result of a formal request by the agency in November 1982. It asked the hospital to automatically phone the sexual assault program whenever a patient arrived complaining of sexual assault.

The counsellor would go to the hospital to offer support and the victim could accept the service or not. Prior to this, the decision to call a counsellor was left to the discretion of the triage nurse. By January 1983, it became official policy in the major Winnipeg Hospitals (Health Sciences Centre and St. Boniface Hospital) to notify the sexual assault program in all cases. It is unlikely that the legislation had any impact on the reporting practices noted in Tables 58 and 59.

Table 59 Who contacted agency?
Pre and post reform data (per cent)

	PRE N=59	POST N=57
Victim	64.4	38.6
Hospital	11.9	45.6
Other	23.7	15.8

Chi-Square	D.F.	Significance
16.26337	2	0.0003

4.8.1 Services provided to victims

As seen in Table 60, crisis intervention was the service most frequently provided to victims in both periods (prereform 84.7 per cent, post reform 98.2 per cent), followed by extended counselling (prereform 54.2 per cent, post reform 10.5 per cent), accompaniment to the police (prereform 20.3 per cent, post reform 7.0 per cent), accompaniment to the hospital (prereform 15.3 per cent, post reform 8.8 per cent), and accompaniment to court (prereform 1.7 per cent, post reform 7.0 per cent). (Note: Percentages add to over 100 because more than one service could have been provided).

Table 60 **Services provided to victims**
Pre and post reform data (per cent)

	PRE N=59	POST N=57
Crises Intervention	84.7	98.2
Counselling	54.2	10.5
Accompany to Hospital	15.3	8.8
Accompany to Police	20.3	7.0
Accompany to Court	1.7	7.0
Other		1.8

4.8.2 Reports to police

As stated in the introduction, the Klinic sexual assault program received a total of 259 reports of sexual assaults in 1981 and 1982. In 1984 and 1985, the program received 518 reports of sexual assault. Whether the law reform has contributed to this increase is uncertain since sexual assault centres have traditionally been regarded by their clients as an alternative to involvement with the criminal justice system. Consequently, although these agencies offer service to women who have reported their victimization to the police, many of their clients have preferred not to become involved in the criminal justice system. An increase in reporting to the sexual assault program could be due to other factors, such as heightened public awareness of the agency and a shift in hospital policy that now includes a routine call to the sexual assault program.

However, the data demonstrate that following the law reform, police reporting rates also increased (Table 61). Over half (58.2 per cent) of the victims in the pre-reform sample contacted the police, while more than three quarters (76.8 per cent) of the post reform sample reported. The difference is statistically significant at the .05

level. All offences in the prereform period were reported formally, while in the later time period, two complaints were given informally, and four were made anonymously.[10]

Most reports were classified by the police as "founded." Information was not available for half of the cases. However, for those recorded, three pre-reform cases were judged "unfounded" by the police. All post reform cases were classified as "founded".

Table 61 Offence reported to police
Pre and post reform data (per cent)

	PRE N=55	POST N=56
Yes	58.2	76.8
No	41.8	23.2

t-value	D.F.	Probability
2.09	109	< .05

Table 62 gives the ages of victims who reported an assault to the police. However, because of intra-familial cases, which would have increased the number of younger victims, were excluded in the post reform sample, these data are not necessarily reflective of the ages of victims who report to the police.

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[10] An informal change in police policy enabled victims to lodge anonymous complaints so that the police would be alerted, but the victim would not have to be involved in an investigation.

Table 62 **Victim's age as reported to police**
Pre and post reform data (frequency)

	PRE 34	POST 38
13 and under	8	1
15 to 19	6	12
20 to 26	2	9
27 to 35	1	6
36 to 50	1	--
Over 50	1	--

Three victims in each sample requested that the investigation be terminated. Five of the investigations in the prereform and one in the post reform sample were terminated by the police because of insufficient evidence. In the latter case, it was stated that the victim knew the assailant, and that drugs and alcohol were involved. (Alcohol consumption will be discussed later in the qualitative analysis of files)

The prereform sample of cases indicate that about half (51.1 per cent) of the offences classified as rapes were reported. In the post reform sample of cases classified as sexual assault, 74 per cent reported. Although comparison between the two samples may be misleading because the post reform sample could include all levels of sexual assaults, reporting did rise to 74 per cent.

All of the offences (from both samples) that were classed as "attempted" were reported to the police (two prereform, five post reform). The six indecent assaults included in the earlier sample were also reported. Because of the change in legislation, similar offences might have been classified as sexual assaults in the post reform sample, or they might be subsumed under the "attempted" classification. The latter possibility would have produced two balanced samples, pre- and post reform, for comparison.

Accordingly, the few offences classified as attempted and the indecent assaults, all of which were reported, were removed from the comparison and the post reform sample showed an increase of 22.9 per cent in police reporting (Table 63). The difference is statistically significant at the .05 level.

Table 63 **Rape/sexual assault reported to police**
Pre and post reform data

	PRE N=47	POST N=50
	Reported to Police	
	Yes	**No**
Rape	51.1	48.9
Sexual Assault	74.0	26.0

t-value	D.F.	Probability
2.38	95	< .05

Reporting to the police was more likely in the post reform than in the prereform period. This was particularly true for offences committed by strangers (Table 64). There was very little difference between the two samples, in the reporting of offences committed by known offenders.

Table 64 **Stranger reported**
Pre and post reform data (per cent)

	PRE N=21	POST N=25
Yes	42.9	84.0
No	57.1	16.0

t-value	D.F.	Probability
2.92	44	< .01

Offences that involved genital intercourse were more likely to be reported in the post reform period (Table 65). The earlier sample indicated that 65 per cent of these offences were reported to the police as opposed to 82.9 per cent in the later sample. It should be noted that there were no data recorded in files for "type of sexual contact" in 24 of the 60 prereform cases, whereas information was missing in only three out of the total 57 in the post reform sample. This factor could severely limit the reliability with respect to pre- and post-reform comparison. However, it is reasonable to assume that in the prereform period, offences classified as "rape" refer to genital intercourse. Therefore, by increasing the prereform sample to what could potentially be the same prereform distribution as found in Table 65, reporting of genital intercourse still shows an increase in the post reform sample.

Table 65 Type of sexual contact by report to the police
Pre and post reform data (per cent)

Sexual Contact	Reported to the Police	
	PRE N=36	POST N=54
Genital Intercourse	65.0	82.9
Other	35.0	17.1

In the 1984-85 sample, if the agency was contacted within the first 48 hours of the offence occurring, the police were also more likely to be contacted (Table 66). Of post reform cases reported to the agency within 48 hours, 73.2 per cent were also reported to the police, compared with 46.9 per cent in the prereform sample.

This is likely an effect of the protocol instituted by the hospital that includes contact with police and the sexual assault program. Consequently, both are more likely to be involved in cases where victims go directly to the hospital. Table 67 shows that in fact, this is the case. In the 1984-85 sample, 82.9 per cent of those reporting to the agency within the first 48 hours of the offence occurring also visited a medical facility, compared with 37.8 per cent in the earlier 1981-82 sample.

Table 66 How soon agency contacted by report to police
Pre and post reform data (per cent)

How Soon Agency Contacted	Reported to Police PRE N=32	 POST N=41
Immediate to 48 hours	46.9	73.2
49 hours - 7 days	34.4	9.8
More than 8 days	18.8	17.1

Table 67 How soon agency contacted by medical attendant?
Pre and post reform data (per cent)

	PRE N=32	POST N=41
Immediate to 48 hours	37.8	82.9
49 hours - 7 days	40.5	7.3
More than 8 days	21.6	9.8

4.8.3 Qualitative analysis of files

At the conclusion of each file review, the researchers wrote up a summary of the case. This practice enabled us to augment our knowledge of any cases that had additional information recorded in files. Although these descriptive data were not available in all circumstances, where counsellors were more detailed in their documentation they provided valuable insights about victims, offences and processes.

For example, the summaries indicated when any information was recorded in the files regarding alcohol consumption by the victim, offender, or both, prior to the assault. There were seven such cases in the 1981-82 data. Two mentioned only the offender as having consumed alcohol and the other five indicated that both parties had been drinking prior to the assault. Only one of these was reported to the police.

The 1984-85 data indicated a larger number of incidents involving liquor (N=20). Fifteen of these cases involved both parties drinking prior to the offence; of these, 10 were reported to the police (including one offence in which they caught the perpetrators in the act). Four of the cases referred only to the victim as having been drinking, and three out of the four were reported to the police (although one of the victims was found by the police). The remaining case, that identified the offender as having consumed alcohol, was reported to the police. Outcomes of these cases are not known.

It appears that in the later sample there was more of a tendency to report sexual assaults to the police, even if the assaults occurred in a social context. Table 68 shows the frequency and attribution of alcohol involvement mentioned in the files.

Table 68 **Alcohol consumed prior to offence**
Pre and post reform data (per cent)

	PRE N=7	POST N=20
Both	5	15
Offender	2	1
Victim	0	4

It is difficult to determine from these data why victims decide to report sexual assaults to the police. For example, in the earlier sample, a victim reported an assault to the police because she was afraid of the offender. The same sample produced a case in which a victim refused to report because of fear of the offender. (Both perpetrators were known to the victim.) In an earlier study by Gunn (1988) it was seen that victims were more inclined to report an offence if: they received immediate support from others; they blamed the assailants; the offenders were strangers; they were injured during the offence. These factors appeared to influence a complainant's decision to rely on the criminal justice system to deal with their victimization. Thus in both the pre- and post reform samples, comments such as: "client didn't report because she felt she should have fought more," "didn't think anyone would believe her because of her past", or "didn't report because of feelings of guilt and self-blame," articulate an expectation of disbelief by police and the courts. At the same time, some victims expressed surprise that they were believed by the police when they did report in these circumstances. Both samples produced a victim who wanted police protection from her cohabitant after she had been sexually assaulted by someone else.

It is evident, however, that how victims perceive past treatment by police and the courts appears to have an impact on their attitudes toward law enforcement personnel and the criminal justice system. This explains the inclination of several victims to refer to past experiences when deciding on what action to take. If they thought that the treatment they received was unfair, they were apt to expect the same treatment in the future. Some victims said they didn't want to go through the experience again.

The 1981-82 sample produced the following excerpts:

> Victim was walking home at night from a movie when male grabbed her, robbed and raped her at knife-point. Victim did not report because she had been raped in 1980. At that time she reported and the assailant was convicted, but got a sentence of only 6 months. **She was unwilling to go through the system again.**[11]
>
> Victim sleeping at friend's house and was raped by drunken acquaintance (friend of the friend). **Client did not want to report to the police because she "knows the system is unfair to women."**
>
> Client was drinking at a party prior to the assault and accepted a ride from three men, two of whom raped her. Client refused to report to police because she had been raped in 1980, had reported and was then arrested as a hostile witness for the trial. **Felt she didn't want to go through the negative experience again.**

The 1984/85 sample produced the following excerpts:

> Victim didn't feel that she could phone police because she didn't feel that they had taken her seriously. Her previous SA had gone to preliminary but **she did not feel that she had been taken seriously by police.**

---

[11] In bold for emphasis.

> Two men dragged her into a front yard and sexually assaulted her. Victim was indecently assaulted by someone in recent past. She reported to police and the offender was let off after she had been through reporting procedures for 1 1/2 years. **She had no faith in the system and its attitudes about sexual assault.**
>
> CFS worker requested counselling for 2 young victims who had been assaulted many times by their baby sitter's common-law husband. Offender pled guilty in exchange for no jail sentence because it was his first offence. **Both children felt very angry and betrayed.**

For victims who talked about negative experiences with the system in the past, the data do not suggest that the law reform is encouraging them to take a chance on future involvement with the criminal justice system.

A review of the summaries produced several favourable comments from victims and their counsellors from the post reform sample, about the manner in which police handled complainants. There were none in the prereform sample. The following excerpts were taken from the 1984-85 files:

> They were at the same party. Victim got drunk and passed out and the assailant sexually assaulted her while she was unconscious. Victim felt angry and confused. She had been told by another man about the assault when she woke up. **Victim felt very comfortable with police** and said that she wanted to follow through with charges.
>
> Victim heard voices in hallway of her rooming house and she went to check them out. Assailant repeatedly hit her and said he wanted sex. Victim was frightened and went back to her room with him where he sexually assaulted her. Victim had some brain damage and had trouble recalling all facts. The nurse and doctors seemed very uncooperative and non-communicative with victim, but **police were patient and warm.**
>
> Victim was walking. Assailant came up from behind, threatened to slash her stomach (victim 8 months pregnant), and then sexually assaulted her. Victim had difficulty expressing herself. Counsellors weren't sure whether it was shock, language barrier or both. **Police were extremely helpful and thoughtful.**
>
> Offender negotiated "hand job" with victim for pay. Offender forced victim down in seat, tied her up, abducted her, beat her, sexually assaulted her, beat her more and assaulted her again with a belt. Victim very eager to

> press charges. She was blindfolded. **Police were very impressed with victim's ability to remember details.**
>
> Victim described herself as a "street person." **She was very surprised that anyone believed her because of her "record" and her race.** She would not have reported had it been only intercourse but the humiliation motivated her. The assailant was arrested and charged immediately while victim was at hospital.

Clearly, in the latter two excerpts, the complaints were treated seriously by the police in spite of the fact that the victims were prostitutes. There was no indication in the prereform sample of prostitutes reporting assaults to the police and, as already mentioned, there were no positive remarks about the interaction between police and complainants. It is not clear whether this is a function of the law, a change in police attitudes, a more conciliatory attitude by sexual assault counsellors in 1984-85 toward the police, or a combination of factors.

Although there are some favourable comments about police attitudes in the post reform files, some police officers in the same time period were described by victims and their counsellors as continuing to demonstrate initial mistrust and apprehension when dealing with sexual assault complainants. The following are also taken from the post reform files:

> Victim was intoxicated at time of sexual assault. Policemen said that victim's report of actual intercourse had been vague and **assumed from the vagueness that she had consented to the intercourse.**
>
> Police expressed concern about victim's credibility. They felt the story was "fuzzy" and that maybe the victim was exaggerating the number of assailants out of embarrassment for not fighting back. Police did not consider that confusion may be due to sexual assault trauma. Hospital tried to do a psych. assessment on victim immediately after forensic. Victim was at hospital over 3 hours. After this ordeal the victim was feeling suicidal. **Police refused to take a statement later on and told her it was either "now or never."**
>
> Offender attacked victim in parking lot of her apartment. He grabbed her, threw her on the ground, covered her mouth and held a knife to her. She screamed and a neighbour phoned police. Victim's neighbour called out and offender fled. Victim identified offender from a mug shot. **Police officer had expressed doubt about pursuing cases such as hers when the victim was out late at night.**

Victim walking home and assailant jumped out from bushes, grabbed her legs and tried to force her down. Victim fought and screamed. Witness called to victim to get into her house. Assailant ran away. **Police implied that victim was shaken up because she was drunk and not because of sexual assault trauma. Police told Klinic counsellors about all the "fake reports" of sexual assault they see.**

There were about an equal number of examples similar to the foregoing comments in the prereform files.

Both samples revealed that charges were laid in two cases against complainants who tried to withdraw from cases. Whether threatened or administered, the use of a polygraph test on a complainant was mentioned in three cases in the prereform sample only.

A husband was charged in both samples for assaulting his wife. The pre-reform offence involved a charge of assault (though there was a sexual assault committed as well) because spousal immunity from a charge of rape was still in effect. The post reform incident was dealt with as a sexual assault charge.

4.8.4 Summary

Data from the Winnipeg sexual assault centre show that there have been a number of positive changes since the passing of Bill C-127. Most notably, there has been an increase in police reporting, greater sensitivity shown toward some complainants by police, and more reporting by prostitutes. It is not possible to say for certain that the legislation alone has been responsible for these changes.

There is some evidence that public awareness has encouraged police reporting. For example, a case from the post reform file review describes an assailant who had been married to the victim's mother for six months. To the mother's knowledge this was the first time he had sexually assaulted the victim. The victim's mother reported that her husband had not shown any violent or harassing behaviour towards his stepdaughter before this. The mother said that it had been easier to report after seeing a TV show about sexual assault called "Something About Amelia." A general movement toward educating the public about sexual assault has produced a more critical and sensitive awareness that was not as prevalent a few years ago.

Nevertheless, cultural stereotypes about what the elements are of a "real" sexual assault have not disappeared, and victims themselves are still prone to these beliefs. An example, also found in the post reform sample, describes a victim getting off a bus and being attacked. The assailant threw her down and tried to take off her clothes, but she fought and screamed, managing to get free. The victim felt very ashamed and imagined that everyone was staring at her. She had a difficult time accepting the fact that she was suffering from sexual assault trauma because there was no intercourse (the criterion for rape) and therefore she didn't define it as a sexual assault. Apparently this victim has not yet been affected by the shift in focus from the sexual to the assaultive aspect of the offence intended by the legislation.

5.0 IMPACT OF BILL C-127 ON PRACTICES, OUTCOMES AND ATTITUDES

5.1 Introduction

This section presents an integrated summary of qualitative data gathered in interviews conducted with five police officers from the Crime Division in the Winnipeg Police Department, eight crown attorneys, 12 defence lawyers, 14 judges (eight Provincial, five Queen's Bench, one Court of Appeal), five sexual assault centre personnel, and two physicians. Respondents all had experience before and after the 1983 sexual assault amendments and were asked about their perception of any changes in practices, outcomes and attitudes that had taken place since the law reform. Sixteen sexual assault victims who had experience with the criminal justice system since the implementation of Bill C-127 were also interviewed. Their experiences and segments of the court monitoring component will be discussed wherever it is relevant to do so, but a more complete summary of the victims' interviews and court cases will be provided in Section 6.

5.2 Changes in reporting and processing

5.2.1 The typical assault

Four of the Winnipeg police who were interviewed said the typical assault involves a suspect known to the complainant and usually takes place after both parties have consumed alcohol. One officer said there was no such thing as a "typical" sexual assault.

Police estimates of unfounded cases range from five to 50 per cent. One officer said his estimate of unfounded cases as defined by the new law would be lower than his personal estimate as he considered a lot of "date rape" to be unfounded. Another officer referred to a book kept in the department on "women who repeatedly come in with unfounded complaints." All of the officers rejected the notion of "an appropriate behavioural response" by a victim, saying that each situation is different and each individual has her own response.

Of the 16 victims who were interviewed, half the offences were committed by strangers. Five of the offenders were acquaintances and three were friends. Sexual fondling was involved in 10 of the cases and genital intercourse occurred in five. Six of the assaults involved violent acts such as hitting, punching and choking.

The 18 sexual assaults monitored in court during the study involved a variety of circumstances and varying levels of physical violence. Charges represented all three levels of sexual assault, as well as related offences. Five cases involved a stranger, three of the accused were legal or common-law husbands, and the rest involved related or known others.

5.2.2 Changes in reporting over time

The numbers of sexual assault cases reported to police is increasing and some police officers felt that the assaults are less difficult to prove. Two officers felt that sexual assault cases have not changed over time: "We still get the full spectrum of cases." One officer felt that as a result of the new legislation, sexual assaults are typically less serious in nature than used to be the case. He also felt that because sexual attitudes in society are "freer" than they used to be, vicious attacks on prostitutes are increasing.

Crown attorneys and judges confirmed the increase in volume and said it was the major change detected in cases coming to the crown prosecution and courts since the proclamation of the sexual assault amendments. There are far more cases now because of an increase in reporting which, they thought, might reflect a greater willingness on the part of victims to come forward rather than a real increase in the number of offences. It was also stated that there was an increase in less serious sexual assaults.

There was a large discrepancy in replies when sexual assault counsellors were asked to estimate the percentage of clients in 1986 who reported assault to the police. This gap went from "next to none," 10-15 per cent, all the way to "about 80 per cent" Neither was there any consensus on whether there was an increase or decrease in calls reported to the police over the past few years.

5.2.3 Charges

Whether or not to lay a sexual assault charge is basically a police decision, made in consultation with the complainant. The decision to lay the charge would require the approval of a senior officer and, in some cases, the crown attorney. The decision as to the exact charge is often made through consultation with the crown attorney, with the main considerations having to do with the nature and quality of the evidence and the credibility of the complainant.

The majority of the respondents said they would be inclined to enter "maximum charges," as the "crown can always adjust later." One officer argued that charges must be "applicable to the details of the offence. No sense overcharging or undercharging."

Defence lawyers said the evidentiary changes affected both the number of charges laid and the likelihood of conviction. They said police now charge far more because, previously, without penetration there was no case. Now, almost any contact can qualify as a sexual assault. Further, the crown attorney has less to prove and hence is more likely to meet its onus of proof.

5.2.4 Proceeding with prosecution

Three prosecutors thought the crown attorneys used their discretion not to proceed less often for sexual assault than for other crimes because of the sensitive nature of the issue. One prosecutor felt women's groups have brought such pressure to bear that crown attorneys were unwilling to decide that a case ought not to proceed, for fear of being censured. Another stated that victims should be told their chances of success in court and, if they still want to proceed, the crown attorneys will do so. In his words, "Who am I to tell her she has no case?"

Crown prosecutors were also asked about the impact of specific features of the offence, complainant, and assailant on their decision to prosecute. A number of crown attorneys commented that they saw it as their duty to proceed where the facts of the complaint disclosed some type of sexual assault and the complainant was willing to go ahead. While other factors may determine the level of charge or strengthen the case, the decision to prosecute is not contingent on them.

Relationship between the complainant and the assailant was considered by only three of the eight crown attorneys as important, and then only in the limited circumstances where the assailant's defence hinges on honest belief in consent. The relationship may also be important in influencing the complainant's willingness to proceed: where she has an ongoing relationship with her assailant, she may not want to co-operate with the crown attorney.

Age difference between the complainant and the assailant was only seen as important where the victim is a child or the charges are age-specific (e.g., sexual intercourse with a female under age 14).

The existence of a criminal record was considered by five crown attorneys as at least somewhat important in the decision to prosecute, but only if the record is for sexual offences. It was stated that crown attorneys may be more eager in such cases and push harder to encourage a reluctant victim to testify. The record of the complainant was seen as irrelevant unless it disclosed convictions for perjury. One crown attorney stated that a record for public mischief (for wilfully laying false complaints) or for making numerous complaints to police that were subsequently withdrawn might cause some concern, but each case had to be assessed on its merits.

Three respondents regarded the use of force, use of a weapon, injury to the complainant and resistance by the complainant as not at all important in the decision to prosecute. All of the crown attorneys stated these factors pertained to the charge and to the strength of the case. For example, use of force may be important if it results in injury providing physical evidence corroborating the charge. Injury to the complainant could be significant for the same reason and also because it may support the more serious charge of sexual assault causing bodily harm as opposed to simple sexual assault. Similarly, evidence of resistance by the complainant may strengthen the charge, but was seen as irrelevant if it did not exist. Use of a weapon may warrant a more serious charge and also strengthens the crown attorney's case since there can be no question of consent if the assailant used one. Finally, proof of penetration was seen as not important at all by six crown attorneys. It was only regarded significant when it provided medical evidence that strengthened the case.

Nine of the defence counsel noted a change in the cases being prosecuted. Not only are there far more prosecutions but also crown attorneys were thought to proceed far more frequently on less serious cases. Few cases are screened out and the crown attorneys are unwilling to negotiate because of the public pressures and concerns for the victims. The defence lawyers also felt there was an increase in the number of cases involving child victims and one said there were more questionable cases due to sloppy investigations.

5.2.5 Withdrawal of complaints

The crown attorneys surveyed felt the withdrawal of a sexual assault complaint was not a frequent occurrence: five stated complaints were withdrawn occasionally, while three said it happened only rarely. The major reason cited for withdrawal was fear of the court process and a desire to avoid the trauma and embarrassment of a trial. Another explanation was that a victim who has a relationship with an assailant may succumb to feelings of sympathy for the assailant or to pressure from the assailant and/or his family. Complainants were seen as marginally less likely to withdraw their complaints now than they were under the old legislation.

A controversial issue concerning complaint withdrawal is the use of sanctions against victims who change their minds against proceeding. None of the crown attorneys felt the use of these formal sanctions was appropriate. The three crown attorneys who stated they would use some sanctions stipulated these would only be appropriate in extreme circumstances (e.g., where the victim had been tampered with or where prosecution was necessary to initiate "dangerous sexual offender" proceedings against the assailant). Even then, the only sanctions used would be informal pressure to proceed or issuance of a warrant for a failure to appear at trial. However, it was noted that where the complainant is reluctant, the case will not be strong and therefore there is little point in the crown attorney forcing the complainant to trial.

5.2.6 Polygraphs

None of the crown attorneys interviewed had ever requested that a complainant be given a polygraph examination and all agreed that a polygraph test would have no significant impact on the prosecution. It was pointed out that such tests are far from accurate and that it is a crown attorney's job to determine whether the complainant is telling the truth, that he/she does on the basis of experience. No change was noted in the use of polygraphs since the sexual assault provisions came into force and most crown attorneys had no experience at all with their use.

Police file data showed no indication that complainants are being asked to submit to a polygraph test. In the prereform period, four complainants, two accused and, in one instance, both the complainant and the accused were asked to take a polygraph. In the post reform period, polygraphs were administered to five accused and, in one case, both the accused and complainant.

File data from the sexual assault centre noted polygraphs were used on three victims in the prereform period, but none in post reform.

5.2.7 Plea-bargaining

Five defence lawyers, all of the crown attorneys except one, and a judge said the change from a single offence (i.e., rape) to three levels of sexual assault has provided more flexibility in plea-bargaining with the prosecution. Prior to the amendment, the prosecution had few options for reducing charges. Now, lower charges are available so that a weak case of a more serious charge can be reduced to a simple sexual assault in exchange for a guilty plea, or a less serious sexual assault can be dealt with summarily instead of by indictment. However, it was stated that serious cases remained hard to negotiate because crown attorneys are under pressure from victims and interest groups not to plea-bargain.

Interviewed persons who did not feel negotiation was easier pointed out that most cases are simple sexual assaults (that cannot be reduced any further) and that the prosecution will not deal on more serious cases unless there is something wrong with them. One lawyer stated that the existence of three levels has simply led to overcharging by police so the prosecution can negotiate down to what the charge should have been in the first place.

All but one lawyer thought that sexual assault cases are harder to negotiate than other cases because the issue is very sensitive and public pressures make the prosecution unwilling to reduce sexual offences. The difficulty in negotiation means that sexual assault cases are plea-bargained less frequently than other equivalent crimes against the person. Again, it was noted that the issue is a political one and also the defendant may not gain anything by pleading guilty, for two reasons. First, if the prosecution is looking for a jail term (which is typical in more serious cases), pleading is not an attractive option. Second, most of these are two-person cases involving the victim's word against the defendant's and therefore it is not easy for the prosecution to prove guilt beyond a reasonable doubt, so the defendant may be better off taking a chance at trial. Several crown attorneys thought that defendants may now be more willing to plead because sexual assault is a generic offence that lacks the strong negative connotations of rape. One crown attorney said defence counsel have fewer opportunities to introduce irrelevant issues -- such as the victim's character or reputation -- since the law changed, and so are more willing to negotiate.

5.2.8 Convictions

Lawyers felt the evidentiary changes affected the likelihood of conviction because the crown attorney has less to prove. The majority of defence counsel surveyed felt the amendments have made it harder to defend persons charged with sexual offences. None felt the defence had become easier and only two perceived no change. They attributed the increased difficulty to the breadth of the offence as well as the changes in evidentiary rules that make prosecution easier. They saw the elimination of the requirements of corroboration and penetration as very significant.

5.2.9 Sentencing

Factors crown attorneys considered in making their recommendations regarding sentence in sexual assault cases were said to be the factors relevant in any case: the defendant's record, the nature of the offence (i.e., seriousness, violence), the physical and psychological impact on the victim, and sentencing precedents in similar cases. Three crown attorneys also stated they took the relationship between the defendant and the victim into account and one stated he also considered the victim's age. One recommended that the minimum sentence be increased.

Several defence lawyers felt sexual assault cases are treated more harshly than the former indecent assault cases. One noted there is now a presumption of jail where there previously was not. While serious sexual assaults are treated more like rape at sentencing, one defence counsel thought sentences were longer than before and that penalties in general were too harsh.

Four judges saw changes in sentencing as an important difference between rape and sexual assault provisions. The limitations imposed on maximum sentences may produce lighter sentences than were previously pronounced. For example, a simple sexual assault that constituted rape under the old law now carries a maximum penalty of 10 years instead of the maximum of life imprisonment specified for rape. This reduction may have diminished the perceived seriousness of the offence. Finally, six of the judges interviewed indicated they did not see significant differences between the old law and the new. It was felt the change was largely symbolic, and the fact that rape was now called sexual assault did not change the way in which cases were treated. Similarly, it was contended that sexual assault cases that do not constitute rape (formerly dealt with as indecent assaults) are subject to the same dispositions as before.

Judges felt the only potential limitation to their discretion as a result of the changes in legislation was the maximum sentences that could be imposed under the new law, but this was not perceived to be a significant restriction on the judges' powers. While the legal rules have changed, the judge's role has not. One judge felt that the existing limitations on sentences should be removed as they make sexual offences appear less serious than before.

5.3 Change in Designation

One of the key objectives of Bill C-127 was to alter definitions and perceptions about the crime of sexual assault, placing more emphasis on the notion of assault and less on sex. If the changes in legislation are to have an impact, knowledge of the changes must be disseminated throughout the criminal justice system. Respondents were queried on this aspect of the definitions and specifically asked for their interpretation of how the legislation had altered some key definitions.

5.3.1 "Sexual"

Only one police officer said this definition had not changed under the new legislation. He argued that police still "use the guideline of what sexual used to be. It hasn't changed. We've just changed the classifications." The remaining respondents said the definition had broadened under the new legislation to include everything from rape to fondling. However, one respondent noted that despite the broader definition, "judges may be more reluctant to convict on touching and grabbing than on rape." One officer suggested that a complainant's perception of what happened and the context of a situation must also be considered in assessing the offence.

There was no consensus among crown attorneys as to whether the change in the law had shifted emphasis from the sexual to the assaultive aspect of the offence: half the crown attorneys felt it had, while the other half did not. Those who thought it had indicated that now any assault with sexual connotations qualifies, whereas before it only counted if penetration had occurred. In contrast, the others noted that the essence of the offence remains sexual and one stated that the change was merely a symbolic one to satisfy women's groups, and that rape is rape regardless of what it is called.

Three judges expressed the view that the change in the law had reduced the stigma of the offence, possibly making victims more willing to complain. The strong negative connotations of the term "rape" have been replaced by the more neutral term "sexual assault".

A majority of crown attorneys believed that chances for successful prosecution had increased because of the broader nature of sexual assault as compared to rape, especially with regard to the type of contact needed to sustain a charge (i.e., any contact versus sexual intercourse). The three crown attorneys who disagreed contended that the issues remain the same.

Defence lawyers saw sexual assault as being a much wider offence as a result of the amendments. They noted that because penetration is no longer required, the behaviours that now constitute sexual assault range along a broad spectrum from a kiss on the cheek to "rape." Several indicated the offence is so broad that almost anything qualifies, so few charges cannot be sustained at some level.

Judges generally agreed that the change in the law had widened the net: rape was a very narrow offence with specific elements whereas sexual assault encompasses a wide range of behaviours from the slightest touching to the most brutal sexual attack. Several judges stated that as a result of this widening, the public is now confused about sexual offences. While most people know what rape is, few know what is involved in sexual assault and, since the majority of sexual assaults do not constitute rape, those who equate the former with the latter may have an inaccurate perception of the type of offences that occur.

Several judges also saw the elimination of the requirement of penetration as significant because this greatly expanded the scope of the offence and also limited the emphasis on this issue on cross-examination. Under the old legislation, where penetration was an element of the offence, defence counsel frequently questioned the victim at great length about whether penetration had occurred. Now, since charges do not stand or fall on this issue, it is not dwelled upon. This may reduce the victim's embarrassment.

Half of the judges interviewed agreed that the meaning of the term "sexual" had been broadened and that it now includes any contact by primary or secondary sexual organs as well as any contact that has sexual overtones or connotations. Several judges expressed concern that the offence may now be too broad because of this wide-open definition. Three judges expressed the opinion that "sexual" is almost synonymous with "indecent" as interpreted in cases of indecent assault, although another believed that the latter term was broader because surrounding circumstances could make an assault indecent even if the contact itself was not.

5.3.2 "Bodily harm"

Police officers used adjectives such as "visible," "serious" and "lasting" to describe the type of injury that constitutes bodily harm. They agreed that assessment of bodily harm was somewhat subjective as it always depended on the extent of the injury. It was suggested that the injury needed to be visible but might or might not require medical attention. Sometimes the officer's assessment was nonmedical. For example, one officer said it depended on a person's lifestyle how seriously he or she would be affected by an injury such as a bloody nose.

The crown attorneys surveyed indicated that any contact with primary or secondary sex organs or other contact in a sexual context or with sexual threats is sufficient to sustain a charge of sexual assault. To warrant a charge of sexual assault causing bodily harm under section 246.2, it was generally agreed that severe bruising (lasting more than a few days), cuts, abrasions or swellings would constitute bodily harm. One crown attorney said anything interfering with the victim's day-to-day functioning is sufficient; another believed even psychological trauma could be enough if it created some physical effects. It was also pointed out that, when there is doubt, it is better to lay the higher charge and, if the case is weak, reduce it in plea bargaining.

When judges were asked for their definition of bodily harm, most of them cited the accepted interpretation of section 245(1) pertaining to charges of assault causing bodily harm; i.e., that the hurt or injury must be "more than merely transient or trifling in nature." However, their comments suggest that the amount of harm done to the complainant need not be great. For instance, bruising lasting more than two days is sufficient, as is breaking the skin or inflicting some injury that is visible and might require treatment. While touching is not enough, one judge felt that causing pain might be sufficient and another stated that even though vaginal penetration did not qualify, tearing of the hymen would constitute bodily harm sufficient to sustain a charge under section 246.2.

5.4 Complainant's character and previous sexual history

None of the crown attorneys viewed the complainant's reputation as important. It was noted that an examination of cases going to court indicates they are not being screened on this basis. One individual even believed that cases involving prostitutes may be stronger than others because it can be argued that these victims have absolutely no reason to lie. One crown attorney thought that the exceptions regarding evidence of the victim's sexual activity should be eliminated.

Five of the 12 defence lawyers interviewed believed the prohibition on evidence of the complainant's reputation and the limitation of evidence pertaining to her sexual activities were appropriate. It was stated that some restrictions are necessary because defence counsel used to go on fishing expeditions at the victim's expense, and relevant evidence is still admissible under the restrictions set out in section 246.6. In contrast, four individuals did not approve of the limitations and three did not know if they were appropriate or not. Several expressed the view that it was unconstitutional to restrict cross-examination and the defendant should not be subject to a prejudiced defence just to make the situation easier for the victim. It was also stated that such evidence may be relevant in some cases (e.g., where the defendant and the victim know one another or where the defence is honest belief in consent) and that judges should have the discretion to allow it in where necessary.

Despite these views, evidence of sexual activity does not appear to be routinely introduced or admitted. Six of the defence counsel had never tried to have it allowed, four had never succeeded in having it allowed and only two had succeeded in a total of three cases. It was agreed that judges are taking a very hard line on this type of evidence.

Three of the judges interviewed thought the prohibition of evidence of the complainant's reputation was inappropriate. Those who objected felt that all relevant evidence should be before the court and that in some circumstances such evidence might be relevant. One judge felt that if the court does its job in controlling defence counsel, then the admission of reputation evidence in the appropriate circumstances would not be improper.

The majority of judges, however, believed that the prohibition was appropriate and such evidence is irrelevant and should never have been admissible in the first place. It was emphasized that the mere fact that a complainant has said "yes" to sexual contact in the past does not mean that she agreed to it this time and, in the words of one respondent, even a prostitute has the right to say "no". One judge stated that the limitation was reasonable because it gave the complainant some protection, even though it was at the defendant's expense.

While a majority of judges believed the restrictions placed on evidence of the complainant's sexual activity with anyone other than the defendant were positive, more judges disapproved of this amendment than of any of the other evidentiary changes. The five judges who disapproved of the restrictions on this evidence centered on relevance. It was felt that all evidence should be before the court and in limited circumstances, this evidence could be relevant. They believed the judge should be able to determinate relevance on facts of individual cases.

However, eight of those surveyed favoured the amendment. They felt the complainant should not be the one on trial and that the elements of the offence, rather than her behaviour, were what established the charge. It was reiterated that a complainant can consent to relations with others and still say "no" to the defendant.

It appears that evidence of sexual activity is not typically introduced. Only four judges had presided over cases where defence counsel sought to introduce such evidence, and none of them had allowed it. When queried about the circumstances in which evidence of the complainant's sexual activity should be allowed, judges generally agreed that the test should be relevance. Four judges felt the exceptions set out in section 246.6 of the Criminal Code adequately covered the circumstances for admissibility.

In two of the monitored cases the victim was asked about her past sexual activity. In one of these cases the questions were put by both the crown attorney and defence counsel and they involved the victim's ongoing relationship with the defendant (her ex-husband), with whom she continued to have sexual relations both before and after the event giving rise to the charges. Because the defence was consent, and the questions pertained to the relationship between the complainant and the defendant, they were relevant and not contrary to the provisions of section 246.6 of the Criminal Code.

The other trial in which the complainant was queried about her sexual past involved a victim who had previously been sexually assaulted by three other family members. The crown attorney questioned her about the assaults on direct examination. In none of the other cases were such questions introduced and the complainant was not asked about her reputation or character in any of the cases.

5.5 Recent complaint

Crown attorneys believed that "recent complaint" continues to be very important even though it is no longer legally necessary. Even though crown attorneys cannot introduce evidence of it, they all felt that judges and juries continue to see "recent complaint" as important and that where the victim had complained promptly it strengthened her credibility and, therefore, the prosecution.

Three crown attorneys felt that eliminating the requirement of "recent complaint" has actually disadvantaged the prosecution.

Most defence lawyers regarded evidence of recent complaint as still important. The fact that a victim had not complained quickly was seen as damaging to the prosecution's case by eight lawyers and somewhat damaging by another four.

The elimination of the requirement of "recent complaint" was regarded as appropriate by most judges who felt that sexual offences should not have different requirements than other offences. Victims should not be precluded from having a case just because they did not complain right away. It was recognized that a failure to complain immediately did not mean the assault did not occur. As the law now stands, the timing of the victim's complaint is just one more piece of evidence that the judge can take into account in determining the weight of the testimony.

Two judges felt the change in the law had had a negative impact on the complainant in that the crown attorney is now prohibited from introducing evidence of a victim's immediate complaint. Another judge felt that the old law (requiring complaint at the "first reasonable opportunity") was sufficiently flexible to allow in the majority of cases and should have been retained.

5.6 Corroboration

Like "recent complaint", corroborating evidence was seen as important by all crown attorneys because it strengthened a case by enhancing the victim's credibility. Two individuals expressed the opinion that despite the change in the law, judges still look for corroborating evidence and, even though a case could succeed without it, the case is much stronger with it.

Most defence lawyers still regarded corroborative evidence as important. Lack of any corroboration was seen as damaging to the prosecution's case by seven lawyers and somewhat damaging by five. Thus, even though the law no longer requires this type of evidence, all respondents agreed that the prosecution's case is not as strong if this evidence is not available.

Only one judge regarded the elimination of the requirement of corroboration as negative. Those who supported the change indicated that sexual offences should not be placed in a separate category with more stringent requirements. Since corroboration is not necessary in other assaults, it should not be necessary for sexual assault. Most judges agreed that although corroborating evidence strengthens the prosecution's case and would be considered in determining guilt beyond a reasonable doubt, it should not be a necessity. If the court is convinced beyond a reasonable doubt on the complainant's evidence alone, it should be able to convict. It was noted that most cases do not have corroboration and that the requirement was unfair to complainants. One judge expressed the opinion that the previous provisions were based on the false belief that men needed protection from fabricated complaints, and that such a belief has no place in the law.

5.7 Consent

Only three crown attorneys expressed an opinion about the importance of independent evidence establishing the reasonableness of the defendant's belief where the defence is honest belief in the victim's consent. All three rated such evidence as extremely important since case law has established it as necessary.

Five defence lawyers felt that the defendant's honest belief in the victim's consent was damaging to the prosecution's case in that it is a defence to the charge.

In only two of the 13 preliminary hearings and trials that were monitored did the defence question the victim about her consent to the act at issue. Consent was the defence in both cases and in both the defendant was convicted. These were also the only cases in which the victim was cross-examined about her use of alcohol or drugs.

5.8 Spousal immunity

The new sexual assault provisions recognize nonconsensual sex as a criminal offence regardless of the relationship between the parties. Although this is a radical departure from the former law, a case from our sample in which the defendant received a jail term for sexually assaulting his wife indicates that the transition is possible. Several crown attorneys said they saw a slight increase in victims who are married to their assailant.

Data from the sexual assault centre indicated that a husband was charged in both time periods for assaulting his wife. The prereform offence involved a charge of assault (though there was a sexual assault committed as well) because spousal immunity from a charge of rape was still in effect. The post reform incident was dealt with as a sexual assault charge.

5.9 The Charter of Rights and Freedoms

The Charter was regarded by prosecutors as having an impact on sexual assault cases to the extent that all criminal cases have been affected. The defendant's rights have been protected to the point that statements are difficult to obtain and have admitted in court, and the prosecution is thereby disadvantaged. Another consequence of the Charter is that cases are now dragged out over a longer period of time, increasing the strain on victims.

Most judges saw the Charter as having an effect on sexual assault cases. By entrenching a philosophy of defendants' rights, the Charter has affected all criminal cases, particularly regarding arrest, detention and admissibility of evidence.

5.10 In-Camera Testimony

All crown attorneys except one were willing to request clearing of the courtroom in appropriate circumstances while a sexual assault complainant testifies. Circumstances cited included: victims who are very young; assaults that are very traumatic; victims who have been threatened or are intimidated in the presence of spectators; where the victim requests it; and where the quality of the victim's evidence would suffer if she or he were forced to testify in public. However, most also felt that the courtroom should be cleared only in exceptional cases and that most victims do not have a problem giving evidence in open court.

The judges sampled were asked to describe the circumstances under which they would clear the court while the victim gave her evidence. Their responses indicated that in-camera testimony is not favoured. Six judges stated that no circumstances justified clearing the courtroom: court proceedings should be open to public scrutiny and justice must be seen to be done. It was noted that the victim's anonymity can be preserved by ordering a ban on publication.

Judges who acknowledged that some circumstances warrant testimony in-camera agreed that such circumstances are highly exceptional. Examples included cases where the complainant is so emotional or nervous that she or he cannot give evidence in public, where the defendant's friends or family are intimidating the victim, where the trial takes place in a small town, where the assault is very brutal or the victim very young. The importance of open court was mentioned repeatedly and it was also noted that there are rarely spectators who are not directly involved in the case.

In every case that was monitored during the study, the victim gave her evidence in open court and the prosecution did not request an in-camera hearing. Such requests did not appear necessary, since there were generally few people present anyway.

5.11 Changes in the courtroom

Ten judges expressed an opinion concerning whether there had been a change in the type of cases coming to court since the amendment in 1983. Half believed that such a change had occurred. The major change noted was an overall increase in the number of cases. However, this change was not attributed to the change in the law but rather to public education and awareness that increased the willingness of victims (especially child victims) to report sexual assaults. A change in the attitudes of police and crown attorneys was another factor mentioned to account for the higher volume of cases before the courts.

One judge felt a lower percentage of cases now come to trial because the creation of three levels of sexual assault permits more successful negotiation between crown and defence counsel. Another believed there are a larger number of less serious cases now and that this is due to greater public awareness. Finally, a judge with extensive experience as a prosecutor and on the bench, stated that far more weak cases come to trial today than previously; however this was not a function of the law, but rather a consequence of the police and crown attorneys' unwillingness to screen cases.

In the past, cases were not prosecuted unless there was a good chance of proving the defendant's guilt beyond a reasonable doubt. At present, because of interest-group pressures, crown attorneys do not feel comfortable exercising their discretion and there has been an increase in the number of cases where the defendant is found not guilty because the prosecution's case is simply not strong enough to satisfy the onus of proof. In such situations, the judge felt that the complainant is doubly victimized.

Judges who did not perceive a change in the type of cases coming to court stated that the same factual situations continue to arise, albeit in greater numbers, especially with regard to the sexual abuse of children.

5.12 Attitudes toward Bill C-127

The majority of judges interviewed saw the introduction of sexual assault legislation as positive. Only four saw the amendments as negative and two regarded them as neither positive or negative. One reason for a negative evaluation is that many different types of behaviour can constitute a sexual assault. It was felt that this has created confusion not only in the public mind but also for members of the legal profession. While the previous situation in which very few offences qualified for prosecution and conviction was far from ideal, there was a concern that the pendulum has swung too far in the opposite direction. As a result, the courts are clogged with large numbers of the least serious types of sexual assaults.

One judge felt the sexual assault provisions did not adequately reflect what actually occurred during an assault. A defendant who subjects his victim to rape and psychological terror will only be guilty of simple sexual assault if the victim suffered no physical injuries. Clearly, a conviction for simple sexual assault fails to convey the magnitude of the offence. While this can be reflected to some extent in sentence, it may not be apparent from the defendant's record.

On the positive side, it was noted that the offence is now all-encompassing: all sexual assaults are covered in a single category and exacerbating factors simply determine the level of a charge and the severity of the sanctions. This eliminates artificial distinctions among offences based upon technicalities like penetration. Another improvement cited was reduction of stigma for all concerned, especially for complainants. The new provisions were also seen as more egalitarian since they apply to both males and females. One judge commented that the law enhances the status of women because it acknowledges that they are people first as opposed to being defined in law on the basis of their sexuality.

Sexual assault counsellors felt the most significant changes brought about by Bill C-127 included a greater inclination by police to take complaints seriously and more prosecutions, though they were uncertain about convictions. One said that sentences seem to have decreased. Some thought the crime does not appear to be perceived any differently. One respondent suggested that perhaps this is because Bill C-127 was passed without any accompanying education offered to those who implement it. Another stated that, in her opinion, the legislation is a move in the right direction, but the change in law is part of a process that must be continued. Finally, the government was commended for its interest in the problem and, because of the direction it is taking, is perceived as being amenable to change.

Interviews conducted with the 16 victims illustrated almost a complete lack of awareness of the sexual assault legislation.

5.13 Media

Crown attorneys had no complaints about the media in Winnipeg. They felt the media have been very responsible in keeping victims' names out of print. Police and social workers were somewhat less positive, suggesting that they could be more responsible and less sensational. Clippings collected during the study are shown in Appendix II.

6.0 NATURE OF THE VICTIM'S EXPERIENCE

This section will describe the nature of the victim's experience as perceived by the respondents described in section 5, as well as first-hand experiences related by victims and a complete summary of hearings and trials monitored.

6.1 Specialized training for agency personnel

Only one police officer of the five interviewed said he had special training in handling sexual assault victims and cases. The majority of officers said that specialized training was necessary and/or desirable because "these cases are more emotional; also more women are needed to handle them" and "we need to be aware of all available programs and outside resources." One officer disagreed: "Basic training is sufficient. Investigate as any other crime. Most complainants don't want to be treated differently." Another officer stated: "Too many people are involved already. Everyone wants to be top banana."

All the officers attended an in-service session provided by the Winnipeg Police Department on the 1983 amendments. One of the respondents wrote the department's training and procedure manual following the legislative changes. The majority felt the law reform had produced changes in police practice indicating that police now focus more on the violence of the act, are more sensitive in their handling of the victim, and work more closely with other agencies.

All respondents from the sexual assault centre received the sexual assault training provided by the agency as well as on-the-job training to deal with sexual assault victims. Two referred to their professional training and said they had attended many workshops and seminars aimed at dealing with sexual assault. Only one said that additional specialized training would be useful and suggested more training on child sexual abuse.

Five victims out of six who spoke to a counsellor from the sexual assault centre were pleased with the services provided and the manner in which they were treated by hospital doctors. There was less satisfaction with Victim Services. The attitudes of respondents towards police were very positive and generally their perception of fair treatment by the criminal justice system suggests that at least for some victims, the intent of the law is being reflected in the handling of sexual assault crimes.

6.2 The victim's experience in the criminal justice system

There were mixed responses concerning whether the change in the law had changed victims' experience within the criminal justice system. Six judges expressed no opinion and five felt that the victim's experience had been improved because the evidentiary changes enacted made cross-examination less traumatic and because sexual assault does not carry the same stigma as rape. Thus, victims are now more willing to complain (as is reflected in the higher volume of sexual assault cases before the courts).

Three judges believed the victim's experience had not changed since she still has to go to court and tell her story, something that remains difficult. One respondent emphasized that the quality of the victim's experience was influenced far more by the attitudes and behaviour of the people who deal with the victim and administer the law, such as police officers, crown attorneys and judges, than by the law per se.

Most victims said they were pleased with the police investigations although some said they were not kept informed about the investigation, whether the accused had been arrested or what charges had been laid.

None of the lawyers indicated they had changed their court tactics since the amendments were introduced.

In preparing a sexual assault case for trial, most crown attorneys said they spend one to two hours interviewing the complainant, although two said they spend two to three hours. It is department policy that sexual assault victims be interviewed before the trial date. This is unusual in that complainants in other criminal cases are generally only spoken to briefly on the morning of the trial in all but the most serious ones.

The crown attorneys felt victims' needs are being met effectively by the prosecution. Only one felt there were problems, stemming from staff shortages in the prosecutor's office, making it impossible to spend more time with victims. Six prosecutors indicated they believed sexual assault victims' experience in the criminal justice system had become less traumatic over the last five years. Factors regarded as important in reducing trauma were the restrictions on evidence of the victim's sexual activity, better protection of the victim's identity and changed social attitudes towards women and sexual assault. Elimination of evidence concerning recent complaint and corroboration were seen as unimportant in this regard.

Data from the Winnipeg sexual assault centre show that there have been a number of positive changes since the passing of Bill C-127. Most notably, there has been an increase in police reporting, greater sensitivity shown toward some complainants by police, and more reporting by prostitutes. It is not possible to say for certain that the legislation alone has been responsible for these changes.

There is some evidence that public awareness has encouraged police reporting. For example, a case from the post reform file review describes an assailant who had been married to the victim's mother for six months. To the mother's knowledge this was the first time that he had sexually assaulted the victim. The victim's mother reported that her husband had not shown any violent or harassing behaviour towards his stepdaughter before this. The mother said that it had been easier to report after seeing a TV show about sexual assault called "Something About Amelia." A general movement toward educating the public about sexual assault may have produced a more critical and sensitive awareness that was not as prevalent a few years ago.

Nevertheless, cultural stereotypes about the elements of a "real" sexual assault have not disappeared, and victims themselves are still prone to these beliefs. An example, also found in the post reform sample, describes a victim getting off a bus and being attacked. The assailant threw her down and tried to take off her clothes, but she fought and screamed, managing to get free. The victim felt very ashamed and imagined that everyone was staring at her. She had a difficult time accepting the fact that she was suffering from sexual assault trauma because there was no intercourse (the criterion for rape) and, therefore, she didn't define it as a sexual assault. Apparently this victim has not yet been affected by the shift in focus from the sexual to the assaultive aspect of the offence intended by the legislation.

At the same time, 14 of the 16 victims interviewed said they would recommend that future victims report to the police. They typically felt that a crime had been committed and the offender should not be allowed to get away with it. Concern was expressed that other women might be hurt and it was felt that reporting reinforces a victim's feeling of self-worth. Only one victim was aware of the new sexual assault legislation and said that it did not affect her decision to report and follow through with the case.

The victims in the monitored trials were, in varying degrees, apprehensive. The interpersonal style of the crown attorney involved in the case appeared to be important in putting the victim at ease. For example, the two crown attorneys who specialize in sexual assault cases routinely began their direct examination by telling the victim they realized it would be upsetting to have to detail their assault to the court, but that it was necessary in the interests of justice. If the victim choked up or cried, they provided her with a glass of water or tissues and if she broke down, she would be asked if she wanted to take a recess. These attorneys were especially supportive and sympathetic towards the victims. One even halted court proceedings when the victim was leaving the courtroom to find out if she had a ride home. The victim said she did not, and the crown attorney told her to wait outside the courtroom until a recess was called so that transportation could be arranged.

There were also several crown attorneys who were obviously not comfortable with the supportive role and treated the victim like any other witness. While their prosecution was adequate, their interpersonal skills could have been improved. This variation simply reflects interpersonal skills and sensitivity. Some people are more skilled than others. However, it also suggests that specialization and training of crown attorneys can minimize the victim's trauma with the court experience.

In the cases observed, the victims were all apprehensive to some extent at the outset of their testimony. One common manifestation of their nervousness was speaking inaudibly. It was frequently necessary for the crown attorney or judge to tell the victim to speak up at least once. This apprehension tended to be more pronounced at preliminary hearings, due to the fact that the preliminary hearing is the victim's first court appearance. (By the time of trial, the victim had already been through the evidence once and knew what to expect.) However, once the victim began to tell her story, she generally performed well. This reflects both preparation by the crown[11] and the fact that a case would not likely proceed to trial if the victim appeared completely incapable of telling her story.[12]

6.3 Court monitoring component

The period monitored was from January 12 to May 1, 1987. For this period, a calendar of all sexual assault cases was compiled from information provided by the crown attorneys' offices for both the inferior and superior courts. The total number of scheduled cases was 102, with a mean of approximately six cases set per week. Initially, court monitoring was conducted two days per week, but it quickly became apparent that most of these cases were not proceeding, so it was necessary to attend court every day to catch the minority of cases that did go on. The majority of the cases (N=66) were set for hearing in Provincial Court, and the data gathered from these cases are discussed first, followed by a consideration of cases proceeding at the superior court level.

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[11] The crown attorneys interviewed agreed that one key aspect of preparation is establishing a rapport with the victim and putting her or him at ease so as to be able to give evidence in a cogent fashion.

[12] It should be noted that this standard appeared extremely low. Children as young as nine proceeded to give evidence and one case featured a victim whose memory and speech were severely impaired by drinking rubbing alcohol and sniffing glue. Thus, the cases monitored do not indicate that only the most articulate victims go to trial.

6.3.1 Provincial Court

In Manitoba, most sexual assault cases that proceed at the Provincial Court level are preliminary hearings. In the period monitored, 66 sexual assaults were set for Provincial Court hearings, only four of which were trials. The balance of cases were preliminary hearings (N=18), stays (N=15), guilty pleas (N=10), matters that did not proceed (N=17) and cases in which the defendant did not show up (N=2).

The number of preliminary hearings is not surprising, since a preliminary is available for any indictable offence, including all sexual assaults unless the charge against the defendant is simple sexual assault and the crown attorney elects to proceed through summary conviction (rare).

Of the 18 preliminary hearings that proceeded during the time-frame monitored, committal to trial was ordered in every one. This is not surprising, because the standard of proof required for committal is considerably lower than that required for conviction at trial. The prosecution need only present enough evidence to support a conviction at trial and the judge makes no assessment of the credibility of prosecution witnesses. The prosecution must present evidence establishing the defendant's guilt beyond a reasonable doubt and this is assessed for credibility (i.e., the weight accorded the evidence may be discounted if the witness is not found credible).

Of the 18 preliminary hearings that took place, six (33.3 per cent) were monitored to collect data on the nature of the court process. Charges in the cases monitored reflected a wide range in terms of both number and seriousness: defendants faced between one and 10 counts of each of the three levels of sexual assault, as well as a number of charges that frequently arose out of the assault (e.g., gross indecency, sexual intercourse with a female under 14, choking to overcome resistance, abduction, possession of a weapon dangerous to the public peace) and other criminal offences (e.g., robbery, assault, assault with a weapon).

6.3.2 Elements of the preliminary hearing

As noted, the only purpose of a preliminary hearing is for the prosecution to make its case. Thus, the defence rarely calls any evidence and the cases monitored were no exception: one had defence witnesses. The prosecution's case typically consists of testimony by the victim and the police officers involved in arrest and investigation. This pattern was shown in all of the monitored preliminary hearings. The victim gave evidence in every case and one or more police officers were called in all but one case.[13] In addition, a medical expert was called in two cases.

The victims in the cases observed were young. They ranged in age from nine years to their early twenties.[14] All gave sworn evidence that, in the case of the younger victims, may reflect their preparation by the crown attorney. As discussed in the analysis of interviews with crown attorneys, it is recognized that the prosecution has a duty to coach its witnesses so that they can be sworn. While a case can proceed even if the victim is found incapable of taking the oath, chances of a successful prosecution are greatly diminished, and hence the matter is unlikely to go to trial in the absence of unusual circumstances, such as the existence of an eyewitness to the assault.

In five of the six cases observed, the victim gave her evidence in open court with the defendant and spectators present. In only one case did the prosecution request that the courtroom be cleared of spectators. Interestingly, the case involved a prostitute who had been assaulted by her client and the judge granted the crown attorney's request.

It should be noted, however, that the presence of casual spectators is rare. Most court facilities are not set up to encourage public participation. For example, in the three court facilities in Winnipeg, courtrooms are not on the main floor and there are few indicators as to how one can discover where a particular trial is taking place. Further, charges are typically listed by the Criminal Code section number rather than description. Thus, someone with a desire to see sexual assault cases would have to know where to find and how to read the dockets and also what section numbers corresponded to sex crimes. Consequently, the presence of people not involved in the preliminary was unusual. The Provincial Court rooms tend to be small and the researcher was generally the only outsider present. (At the outset of the observation, the researcher was typically asked by both crown attorney and defence counsel if she was a witness in the case). Hence, presence of unwanted spectators does not appear to pose a problem.

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[13] In three cases, a single officer testified and in the other two cases, there were two and three officers respectively.

[14] The ages were nine, 13, 15, and three victims were classified as being in their early twenties.

More problematic was the intimidation caused by the presence of the defendant. It was observed that crown attorneys and judges went to great lengths to assure that the defendant did not, by words or gestures, intimidate the victim. For example, several of the crown attorneys began their case by telling the victim that they recognized the difficulty of telling about their assault, but that the victim should just focus on them (the crown attorneys) and ignore everyone else. However, the mere presence of the defendant may be intimidating. In the small Provincial courtrooms, the defendant may be seated only five or six feet away from the victim, and this is bound to be traumatic. Unfortunately for the victim, it is one of the most fundamental rights of our legal system that an accused be able to face his/her accuser and it is highly unlikely that the circumstances would be deemed sufficient to abrogate this right, particularly since the passage of the Canadian Charter of Rights and Freedoms.

In all but one case, the victim was accompanied by a supportive other such as a sexual assault worker, social worker or family member. The supporter's chief function was accompanying the victim in and out of the courtroom and providing moral support to her during recesses. The importance to the victim of this type of support was illustrated in a case in which the victim's sister came with her into the courtroom but was required to leave because the crown attorney indicated that he might want to call her as a witness at the trial. The victim, who had been seriously brutalized by her common-law husband in the presence of their young child, was visibly distraught by her sister's exclusion, and there was some doubt as to whether she would appear back in court after the noon recess.

Participation in a preliminary hearing appeared to be quite stressful to the victims. It is likely to be a victim's first appearance in court (which is itself traumatic) and it is also likely to be the first time the victim has had to tell the details of her or his assault in public. The impact is exacerbated by the fact that the victim must speak loudly and clearly and answer questions about the most minute details of the victimization. The defence counsel's primary interest is in testing the witness, looking for weaknesses and sources of contradiction in her evidence that can be exploited at trial. Because it is virtually a foregone conclusion that the defendant will be committed to trial, the defence counsel has nothing to lose by closely cross-examining the victim.

While the victims were all questioned carefully by both crown and defence counsel, questions centered on the events giving rise to the charges. In only two cases did defence counsel even attempt to ask the victim about her prior sexual activity. In both cases the crown attorney objected and the judge sustained.[15]

In only one case was the victim cross-examined about her reputation or character. In this case, the teenage victim had laid complaints against her mother and her mother's common-law husband. Defence counsel questioned her about her problems getting along with her parents, relatives, foster parents and at school. These questions were allowed, but not those relating to her sexual activity.

The victim's evidence at the preliminary hearing typically formed the bulk of the crown attorney's case, both in terms of substance and of time. Victims gave direct evidence for an average of 37.8 minutes and were cross-examined for an average of 62.6 minutes. The mean length of time for which they were on the stand was 100.4 minutes.

In none of the monitored preliminary hearings did the defence call any evidence. Given that committal to trial is virtually a foregone conclusion, it is not surprising that the defence refuses to "tip its hand" by calling witnesses. Because of this, it is not possible to determine the nature of the defence in preliminary hearings. Closing arguments are unusual and the judge rarely makes any comments concerning the reasons for committal. This pattern applied in the monitored cases: all defendants were committed to trial, no closing arguments were made, and the judges gave no reasons for their decisions to commit other than the fact that the prosecution had met its onus of proof.

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[15] In one of the cases, the question was arguably relevant since there was some question as to which of three individuals had assaulted the victim, and she was asked whether she had had a sexual relationship with either of the other two who were not charged. As the charge was not sexual assault, but rather sexual intercourse with a female under 14, the question may have had some merit. Nonetheless, it was disallowed. In the other case, defence counsel's repeated attempts to question the victim about her sexual history were completely without merit. The judge repeatedly warned the defence counsel that such questions would not be allowed, but he persisted, succeeding only in angering the judge.

6.3.3 Trials and guilty pleas at provincial court

As previously noted, trials for sexual assault charges at the Provincial Court level are unusual. In the period monitored, only four cases came to trial. The reason for this low number is procedural: the only cases that must proceed in Provincial Court are summary conviction offences and the prosecution can only elect to proceed summarily in cases of simple sexual assault (Criminal Code section 246.1). Summary conviction offences carry low maximum penalties (i.e., a maximum of six months imprisonment and/or a maximum $2000 fine) and hence, crown attorneys are unwilling to designate most sexual offences (that are perceived as serious crimes) as belonging in this category. Thus, most sexual assaults are handled as indictable offences, allowing the defendant to elect trial by Provincial Court judge, Queen's Bench judge, or Queen's Bench judge and jury. The latter two choices are favoured because the defendant is then entitled to a preliminary hearing. A preliminary hearing not only delays the case (which is advantageous to the defence) but also provides a clear look at the prosecution's case before trial.

Of the four trials that proceeded at Provincial Court, two resulted in conviction, one in acquittal and one was adjourned due to counsel's lack of preparedness to proceed. Another 10 cases were concluded by guilty plea. Typically the defendant agrees to plead guilty in exchange for a reduction in the number or seriousness of the charges, or some lenient recommendation for sentence by the crown attorney. Of the 10 guilty pleas in our sample, no information was available on four, another four had charges reduced, and in two cases charges remained the same.

6.3.4 Trials in Court of Queen's Bench

Of the 36 sexual assault cases set for trial in the Court of Queen's Bench between January and May, 1987, 13 (36.1 per cent) actually proceeded. Of these, 7 (53.9 per cent) were monitored. Only three of the trials (23.1 per cent) resulted in findings of guilt. Nine of the defendants were found not guilty and one case, also monitored, resulted in a mistrial halfway through the trial. The majority of the remaining cases were resolved by way of guilty plea (N=12 or 33.3 per cent) or stay (N=4 or 11.1 per cent). Five cases (13.9 per cent) did not proceed.[16] No information was available for three cases (8.3 per cent).

The cases monitored provide a good cross-section in terms of number and seriousness of charges. The defendants faced between one and seven counts each, with a mode of two and a mean of 3.3. The charges represented all three levels of sexual assault, as well as related offences of: sexual intercourse with a female under 14; incest; gross indecency; unlawful confinement; buggery; and indecent assault.[17] Five of the seven trials took place before a judge alone and two were jury trials.[18]

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[16] Failure to proceed was due to the non-appearance of the defendant or requests by counsel for adjournment.

As at the preliminary level, changes to charges at trials are unusual. By the time a case gets to the Court of Queen's Bench, charges have been reviewed by at least two crown attorneys and confirmed by the preliminary hearing judge. Typically, the only reason to make changes is if a deal has been negotiated and the defendant agrees to plead guilty. Of the monitored trials, only one had charges altered. In that case, the defendant had been charged with both *sexual assault* and *sexual assault causing bodily harm* in connection with a single incident. As the charges were duplicated, the *sexual assault causing bodily harm* was stayed by the crown attorney.

The trials observed involved more witnesses than did the preliminary hearings monitored. The range was from two to eight witnesses for the prosecution, with a mean of 4.3. In every case, the victim(s) and a physician gave evidence. Police witnesses were called in three cases, one involved forensic experts and in five cases, others (parents and friends of the victims and a welfare worker) took the stand.

This pattern suggests that the prosecution's case rests primarily on the testimony of the victim, and the observations made support this suggestion. While a doctor or police officer may provide ancillary information, in the cases observed it was the victim's evidence that established the elements of the offence. Certainly the victim spent more time on the stand than any other single witness -- from 40 minutes to four-and-a-half-hours. The mean length of time was 122.6 minutes, of which 58.5 minutes consisted of direct examination by the crown attorney and 64.1 minutes consisted of cross-examination by the defence counsel.

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[17] Although indecent assault is no longer an offence under the new legislation, the crimes for which the defendant was charged began prior to 1983.

[18] This apparent shift away from jury trials is an interesting development. Legal wisdom dictates that where one has a defence based on emotion rather than law, a jury should be elected. Under the old legislation, defence counsel frequently chose to put rape cases before juries because they could discredit the victim and thereby raise a reasonable doubt in the minds of the jurors. Now that defences based on emotional attacks of the victim's reputation have been circumscribed, it is not surprising that jury trials have declined in popularity.

All the victims gave evidence under oath despite the fact that there were victims aged 10, 11, 13 and 14. This ability to be sworn may reflect the fact (evidenced in crown interview data) that it is the obligation of the crown attorney to prepare witnesses sufficiently to be sworn. If a child could not be sufficiently prepared, it is unlikely that the case would proceed since the type of additional evidence needed to establish guilt beyond a reasonable doubt is unlikely to be available.

In every case the victim gave her evidence in open court and the crown attorney did not request an in-camera hearing. Such requests did not appear necessary, since there were generally few people present anyway. It should also be noted that the legal circumstances required to justify exclusion of the public are extreme, reflecting the importance of an open court to the criminal justice system. Similarly, the defendant was present for all evidence in every case.

6.3.5 Nature of the victim's testimony

The standard pattern of the victim's testimony, in sexual assault as in other types of cases, is to have the victim tell her or his story in chronological order on direct examination by the crown attorney. The questions are generally open-ended and non-specific (e.g., "What happened then?") unless the victim is a child, in which case the crown attorney may be permitted to lead her or him through the direct evidence. The defence counsel then cross-examines, asking very specific questions, which often require only "Yes" or "No" answers.

The nature of the victim's experience on the stand appears somewhat improved since the new sexual assault legislation was passed. Cases monitored indicated that the victims were being treated more like victims of other types of crimes. While this involves close questioning to assess memory and credibility, the kind of inquisition concerning every aspect of the victim's personal that previously characterized rape trials simply did not occur. However, other questions asked in cross-examination reflected the nature of the case.

In cases (three preliminary hearings and four trials) where there had been a delay of months or years in reporting, for example,the victims were questioned about the delay. The case in which this was emphasized most strongly was a jury trial. Defence counsel made much of the fact that the teenage victim had not told her grandmother of sexual assaults by her uncle (the grandmother's son) at the time they occurred. He suggested to the jury that if the assaults had really taken place, the victim would not have waited months to tell. While it cannot be determined how influential this argument alone was, the defendant in this case was acquitted.

In only two of the 13 preliminary hearings and trials did the defence question the victim about her consent to the act at issue. Consent was the defence in both cases, and in both the defendant was convicted. These were also the only cases in which the victim was cross-examined about her use of alcohol or drugs. In both cases the victims had been drinking with the defendant prior to the assault.

Identification was only at issue in one preliminary hearing and one trial, resulting in committal to trial and a finding of guilt, respectively. The lack of emphasis on identification is understandable when the relationship between victim and defendant is considered. In none of the cases were the two complete strangers. The victim had some knowledge of the defendant in two cases, was acquainted with the defendant in one case, and had a close relationship in the remainder (i.e., four involved a parent or parental surrogate, two were ex-spouses, one was a spouse, one an uncle and one her mother's boyfriend).[19]

Cross-examination about injuries was much more common. Such questions were asked in seven of the 13 monitored cases. In only one of these cases did the court fail to commit/convict.

A number of tactics were employed by defence counsel to undermine the victim's credibility. In four of the seven trials, inconsistencies between the victim's evidence at the preliminary hearing and the trial were raised. In none of these cases were the inconsistencies glaring and the impact of the tactic appeared minimal. In two cases (both involving teenage victims), the victims were rigorously questioned about their retractions of the allegations against the defendants. Other techniques to discredit the victim's testimony involved suggestions that the victim disliked or was angry with her mother (the defendant), or her mother's boyfriend, that she simply wanted to get away from a strict home life, and that the allegations were made up to influence the outcome of a custody battle over the victim. For the most part the victims stood up well to these allegations, particularly at trial where they knew what to expect on the basis of the preliminary experience. The presence of supportive others who accompanied the victims in and out of the courtroom appeared extremely important to them. As at the preliminary level, all but one of the victims at trial were escorted by family members, representatives of victim services or sexual assault workers.

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[19] The remaining case involved a prostitute and her client but, as court was cleared for her testimony, it could not be determined whether she knew the defendant or to what degree.

6.3.6 The defence

In many criminal cases, no evidence is called by the defence. Reasons for this include the fact that the prosecution bears the onus of proof and if it does not establish the defendant's guilt beyond a reasonable doubt on every element of the offence, the defendant is entitled to be acquitted. Thus, if on cross-examination the defence counsel can create a reasonable doubt on any aspect, there is no reason to call evidence. Also, many defendants do not make particularly credible witnesses. If the defendant does not present well, it is preferable not to call him. In addition, if he has a criminal record he can be cross-examined about it because it is deemed relevant to his credibility, and most defence counsel regard this revelation as prejudicial.

Defence evidence was called in only three of the monitored trials, and in all three cases the defendant testified. Two of these cases involved the defence of consent. To succeed, this requires the defence counsel to present some evidence from which the defendant's honest belief in the victim's consent can be inferred. The remaining case involved the defence that the incident did not occur; the defendant took the stand to introduce photographic evidence establishing the impossibility of the assaults taking place in the alleged location. The latter case resulted in an acquittal; the former two, in findings of guilt. All three of the defendants were questioned about their use of alcohol, as relevant to the formulation of honest belief in consent.

In two cases where defence evidence was called, witnesses other than the defendant also took the stand. In one case the defendant's father testified as to his son's behaviour following the alleged assault. In the other, the victim's mother denied the validity of the allegations against her boyfriend. A family conciliation counsellor was also called to give evidence concerning the bitter custody battle between the victim's parents, but the judge refused to hear this evidence.

The defendants were all male, with the exception of one female co-defendant and one female defendant, both of whom were the victim's mother. As at the preliminary level, the majority were Caucasian (N=6) and one was Native. They appeared to range in age from approximately 20 to 50 years.

The most common defence was that the incident did not occur. In four of the trials, defence counsel argued that the allegations were fabricated. In two instances, the motivation for the victim's allegations was said to stem from a custody battle.[20] In one case, the defendant was the victim's father and in the other, her mother's boyfriend. In both these cases the defendant was found not guilty. Consent of the victim was argued (unsuccessfully) in another two cases and in one, identity was an issue.

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[20] This argument appears to be gaining some attention and acceptance as an explanation of why children come forward with complaints of sexual abuse; i.e., the abuse did not really happen and one parent (typically the mother) manipulates the child into claiming the father abused her so that he will not get custody. If the allegations

As noted earlier, the nature of the defence in the preliminary hearings was difficult to determine because no evidence was called in any of the cases and closing arguments did not take place.

6.3.7 Verdict

Two of the defendants were found guilty as charged, one was found guilty of a lesser offence, and four were found not guilty. Two of the three convicted were incarcerated (for periods of three and five months respectively) and the third defendant did not appear for sentencing during the observation period.

6.3.8 Impressions of the victim's experience in court

Participation in the legal process is traumatic for most people. Courtrooms tend to be physically intimidating and the proceedings are governed by a complex set of rules that stipulate who gets to say what to whom, what can and cannot be presented as evidence and so on. Hence, most participants feel mystified and frustrated. The situation is exacerbated as the participant is a victim, since he or she has suffered some personal loss or damage. When the offence is sexual assault, the victim has been violated in a particularly intimate fashion.

Cross-examination by defence counsel is more of an ordeal than direct examination. The defence counsel's job is to create a reasonable doubt in the mind of the judge or jury and to this end, victims are questioned about minute details of an event that occurred months or years earlier. The majority of defence lawyers in the

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were real, the defence argument goes, the child would have told at the time and not waited until the parents were fighting over custody. However, children may not disclose abuse until long after the fact for a number of reasons. For example, when the abuser is the mother's husband, it may be only when the mother rejects her husband and separates from him that the child feels able to tell. It may also be that many abusers coerce their victims into remaining silent as long as they share a household. When the abuser no longer resides with the child (i.e., when the parents separate), the child may summon the courage to reveal the abuse. Therefore, the fact that disclosure of sexual abuse follows marital breakdown should not be taken as evidence that the victim is lying.

monitored cases were at least somewhat aggressive in their approach.[21] In two cases the lawyers subjected the victim to particularly intense questioning. Both cases were preliminary hearings. This may partially account for the grilling the victims received since defence counsel use the hearing to test the victim's evidence. However, it was the observer's opinion that both lawyers appeared to overstep the bounds of diligent defence of their client.

In the first of these two cases, the defendant faced six charges in connection with a brutal assault on his then common-law wife, including aggravated sexual assault, gross indecency, and assault causing bodily harm. The victim was cross-examined for 93 minutes on the most minute details of the attack, which was particularly traumatic because it had taken place in front of their three-year-old child. While the observer felt that the crown attorney ought to have been more vigilant in protecting the victim from being badgered, the questions were not legally objectionable.[22]

The other case involved alleged sexual assault by the teenage victim's mother and her boyfriend. The victim was cross-examined for 135 minutes and despite repeated sustained objections from the crown attorney, the defence counsel continued to ask questions about the victim's sexual activity, reputation and character. The judge and defence counsel engaged in several heated exchanges at the admissibility of such questions. The judge was adamant in his refusal to allow the questions and the defence counsel made a formal objection for the record concerning the judge's position. Unfortunately for sexual assault complainants, no mere change in the law can produce changes in the personality of lawyers.

All of the judges in the monitored trials displayed concern for the victims' rights and interests. For example, one judge, declaring a mistrial, instructed the crown attorney to explain to the victim what had happened and to check with her before setting a new date. Another invited the crown attorney to object when the defence counsel cross-examined the victim about "recent complaint". Several spoke directly to the victim at the outset of her testimony and thanked her for giving evidence.

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[21] However, without examining their behaviour in other types of cases, it is impossible to say whether they were harder on sexual assault victims than on other complainants.

[22] The defendant in this case was committed to trial on all counts, but subsequently pleaded guilty to only assault causing bodily harm, receiving a four-month sentence.

These comments are not intended to suggest that the court experience is in any way a positive one for the victim. The physical setting of the courtroom is intimidating, with the judge's elevated dias and the witness box facing the courtroom. The proceedings are often confusing, governed by rules that the crown attorney is too busy to explain once the hearing begins. Thus, the experience is an isolating one for the victim.

Another problem is that the task of a trial is to determine whether the prosecution has met its onus of establishing the defendant's guilt beyond a reasonable doubt. Unfortunately, factual guilt does not necessarily translate into legal guilt. Although the need for corroboration has been relaxed with the provisions of Bill C-127, in most of the cases monitored, evidence substantiating the charge was still important.

In all of the monitored cases, regardless of outcome, it was apparent that something had happened to the victim, but this sort of deduction is far short of the legal standard of proof required to convict. This gap between factual and legal guilt was particularly apparent in cases involving child victims. Often, children do not make good witnesses because their sense of time and ability to remember dates may not be well-developed. They typically do not disclose abuse until long after the assault and there usually are no witnesses to the victimization. Thus, cases succeed or fail on whether their evidence alone is enough to establish the defendant's guilt beyond a reasonable doubt, and the mere fact that the defendant did it does not guarantee that the crown attorney can prove it. Unfortunately, short of reversing the onus of proof, there is little that will improve this situation.

6.3.9 Summary of trials and hearings

Trial #1

This Court of Queen's Bench trial was held in February, 1987. The charges at trial involved one count of sexual assault with threats/bodily harm and one count of unlawful confinement. These charges were not changed. The complainant was a female assaulted by her ex-spouse. Crown counsel called eight witnesses for the prosecution. These included the complainant, a police officer, three forensic officers, a medical doctor and two friends of the complainant.

The forensic officers testified that hair and semen samples from the complainant matched that of the accused and that the complainant's blood tested negative for alcohol. The doctor testified that the complainant was highly upset, had bruises on her neck, arm, hand and leg and blood oozing from her cervix.

The complainant's testimony was sworn. She was examined for 30 minutes by the crown attorney and cross-examined for 27 minutes by the defence. The complainant testified that she had been married to the accused for 10 years and had four children with him. On the night of the assault, the accused wanted to discuss the children. The complainant picked him up, they drove to a bar where they had a couple of drinks and danced. On the way home the accused, angry because the complainant refused to let him come home with her, took control of the car; a struggle followed and the car went into the ditch. The accused tried to choke the complainant, ripped her clothes off and had intercourse with her.

The defence argued that the accused had had sex with the complainant both before and after the alleged assault and that he honestly believed she had consented that particular evening. The crown attorney argued that the new sexual assault provisions make these trials a "whole new ball game" and that this case was exactly the type of case that parliament intended to cover. Furthermore, the complainant's injuries showed that consent was not granted.

The accused was found guilty of sexual assault. The unlawful confinement charge was stayed. The judge commented that although the case was unusual because of the sexual relationship between both parties, the complainant's evidence was more credible than that of the accused. He sentenced the accused to three months in jail despite a letter from the complainant asking that the accused not go to jail.

Trial #2

This assize trial was held in May, 1987, and lasted five days. The charges at trial were two counts of simple sexual assault, two counts of gross indecency and two counts of unlawful confinement. These charges had not changed since originally laid. The crown attorney asked for a ban on the publication of the complainants' names and the motion was granted.

The complainants were two teenage females. They met the accused for the first time at a lobster roast. They decided to go to a party and the accused offered to give them a ride. The complainants testified that the accused drove them to the "pits" and then got out of the truck to urinate. He then tried to pull one of the complainants out of the truck. When she resisted, he punched her in the face and kneed her in the stomach. The second complainant got out of the truck to help her and was then punched in the face. Both complainants were then forced to perform fellatio on the accused and cunnilingus on each other.

Crown counsel called eight witnesses for the prosecution. These included the complainants, father of complainant #1, mother of complainant #2, a man who found the truck of the accused, two police officers and a medical doctor.

The testimony of both complainants was sworn. The first complainant was examined for two-and-a-half hours by the crown attorney and two hours by the defence. The second complainant was examined for three hours by the crown attorney and one hour by the defence.

The defence argued that the complainants had consented to the sexual acts and that the next day they felt so disgusted by what they had done, they decided to lie and say that they were forced. He pointed to inconsistencies in the testimony of the complainants as they could not agree on the number of times they were hit or the number of times they performed sexual acts. He suggested that the complainants had consumed a large enough quantity of alcohol that they "got carried away." He also disputed the alleged violence of the offence because the complainants only had minor injuries (three bruises each).

The defendant testified that he met the complainants at the lobster roast, they went off "roading" with him and when he asked them if they wanted a "threesome," they said "yes." The defendant said that the complainants were willing participants in all of the sexual acts performed.

In his closing arguments, the crown attorney argued that discrepancies in the complainants' testimony were understandable because so many things were happening and it was extremely traumatic. The crown attorney said it was significant that the accused finished his assaults at sunrise: "At sunrise his fantasy night of sex had ended."

In his instructions to the jury, the judge asked them to weigh the credibility of the complainants against the credibility of the accused. The accused was found guilty of two counts of gross indecency. He was acquitted on two counts of unlawful confinement and two counts of sexual assault.

The crown attorney called for a jail sentence, stating that these young girls were very traumatized by the assaults and that the defendant had committed similar offences in the past. The defence countered by stating that the girls had willingly participated in the acts and that his client had already spent seven months in custody awaiting trial. He asked that the defendant not be subject to further incarceration.

The accused was sentenced to five months in jail on each count, to be served concurrently. The judge remarked that the offences were very sexual in nature and grossly indecent.

Trial #3

This trial in Court of Queen's Bench was held in January, 1987. The accused was charged with one count of simple sexual assault and one count of sexual intercourse with a female under 14. These charges were not changed at trial. The complainant was a 13-year-old female who alleged that she had been assaulted on two occasions by her mother's boyfriend. The accused did not appear in court and a warrant was issued for his arrest.

Crown counsel called three witnesses for the prosecution. These included the complainant, the complainant's father and a medical doctor. The complainant's testimony was sworn. She was examined for 20 minutes by the crown attorney and 55 minutes by the defence. The complainant testified that the accused had sexual intercourse with her initially in a camper trailer and subsequently, at his residence. The complainant's father was only asked to verify the age of his daughter. The doctor testified that injuries to the complainant's hymen indicated sexual activity.

It was later decided the allegations were the result of a custody dispute between the complainant's mother and boyfriend and her father. Several inconsistencies in her statements to police and at the preliminary hearing were used in defence of the accused. The accused was found not guilty.

Trial #4

This Assize trial was held in April, 1987, and lasted three days. The charges at trial were three counts of simple sexual assault. These charges were not changed.

The complainant was a 13-year- old female who alleged that when she was 11 years old, she was assaulted on three occasions by her uncle.

Crown counsel called the complainant and a doctor as witnesses for the prosecution. The defence did not call any witnesses in this trial. The doctor testified that the complainant had a hymenal opening of twice the normal size and there was tearing and scar tissue present.

The complainant's testimony was sworn. She was examined for 30 minutes by the prosecution and cross-examined for 80 minutes by the defence. The complainant testified that her uncle, on two occasions, had fondled her breasts and on a third occasion, had put his finger in her vagina. The assaults occurred at the complainant's residence where she was living with her grandparents and the accused. Some months later, the complainant told friends about the assaults and was subsequently removed from her home and placed in a foster home and then in a group home. Some time later, another uncle took the complainant and her grandmother on a holiday. While there, the complainant wrote to the defendant's lawyer saying that she had fabricated the allegations. The complainant testified that her grandmother asked her to write the letter and wrote the rough draft that the complainant rewrote in her own words.

The defence questioned the complainant about her delay in reporting the assaults. He suggested that the complainant made up the allegations because she wasn't getting along with either her grandmother or her uncle and wanted to live elsewhere. He tried to establish that the complainant had an imaginative nature -- that she watched soap operas, read romance novels and wrote stories with sexual overtones. He also suggested that the complainant's hymen may have been stretched by tampons and that the complainant's letter of retraction was of her own free will.

In his closing remarks, the crown attorney noted the complainant's injuries and the large size of the accused. He said that it was understandable that the complainant did not want to tell her grandmother as the accused was her grandmother's son. He argued that there was no evidence to contradict the complainant's statement.

In his closing remarks, the defence counsel continued his previous line of defence and also cautioned the jury not to feel sympathy for the complainant. He referred to the American case where a woman went on national television to retract her earlier accusations of rape.

The judge instructed the jury to examine the complainant's delay in reporting, her interest in sexual matters, her eagerness to leave home and her letter of retraction. The accused was found not guilty.

Trial #5

This trial in Court of Queen's Bench was held in April, 1987. The charges at trial were two counts of gross indecency and one count each of: simple sexual assault, sexual intercourse with a female under 14, incest, buggery and indecent assault.

The female complainant was allegedly assaulted by her father on a number of occasions during a one-year period. The complainant was eight years old at the time of the alleged assaults and 10 years old at the time of trial.

The crown attorney called four witnesses for the prosecution: a police officer, the complainant, a medical doctor and the complainant's mother. The doctor testified that the complainant's medical examination indicated sexual activity that was both genital and anal in nature. The complainant's mother (ex-wife of the accused) testified that she had observed the accused pressing against the complainant and lying in bed with her. On all of these occasions the complainant was fully clothed; however, the accused was sometimes nude.

The complainant's testimony was sworn. She was examined for 40 minutes by the prosecution and 45 minutes by the defence. She recounted sexual assaults by her father that included intercourse, buggery, indecent assault and masturbation.

The defence argued that the complainant fabricated the assaults because of a custody battle between her parents. He noted that the assaults were reported during the custody battle and two years after they were alleged to have occurred. He said the victim gave a statement to the police stating she was disclosing the assaults because there was going to be a custody battle.

The accused was found not guilty.

Trial #6

This trial in Court of Queen's Bench was held February, 1987. The original charges involved one count of sexual assault with threats/bodily harm and one count of aggravated sexual assault. The charge of aggravated sexual assault was stayed by the crown attorney.

The case involved a 16-year-old female. She was allegedly assaulted by a male whom she had often seen "hanging around" a shopping mall. The complainant testified that the accused had followed her out of the mall, chased her and tackled her, undid her pants and penetrated her vagina with his finger.

After the complainant's testimony, the judge announced that she often shopped at the mall and had seen the accused hanging around there. Therefore, she did not feel that she could proceed with the case. A mistrial was declared and the trial was remanded to a later date.

Trial #7

This case was held at Provincial Court in February, 1987. The original charge was one count of simple sexual assault. The charge was stayed by the crown attorney at trial.

The complainant was a 13-year-old female. The complainant was not willing to co-operate with the crown attorney. The crown attorney had not talked to her prior to trial and when he did consult her, she said that the accused was her boyfriend and that she had only told her friends that they were "necking." It is unclear why a charge was laid in this case.

Trial #8

This trial in Court of Queen's Bench was held in January, 1987. The original charge was one count of simple sexual assault. The charge was stayed by the crown attorney at trial.

The defence sent a letter to the crown attorney stating his intention to cross-examine the 10-year-old complainant as to her previous allegations of sexual assault by her brother heard in court the year before, and similar allegations regarding a nine-year-old classmate. The accused in this case was a 59-year-old male.

Trial #9

This trial was held at Provincial Court in March, 1987. The original charges were two counts of sexual assault and one count each of: sexual intercourse with a female under 14, buggery, gross indecency and assault causing bodily harm. All of the original charges were stayed at trial. The accused pleaded guilty to a lesser offence of simple assault. He received a two-year suspended sentence and supervised probation.

Trial #10

This trial in Court of Queen's Bench was held in February, 1987. The original charges involved one count of sexual assault with threats/bodily harm and one count of gross indecency. Prior to the trial, the defence stayed the charge of gross indecency and the accused pleaded guilty to one count of sexual assault with threats/bodily harm.

The accused had met the complainant at a bar and was later invited to her apartment. He hit the complainant on the head with a beer bottle, forced her to perform fellatio and attempted to have genital intercourse with her. The accused admitted the sexual offences but said that the complainant consented to them.

The accused was sentenced to one year incarceration with two years supervised probation. He was also given an order to abstain from alcohol and a five-year firearm prohibition.

Trail #11

This trial in Court of Queen's Bench was held in April, 1987. The original charges were four counts of sexual assault (simple). The four accused pleaded guilty to the charges prior to the commencement of the trial.

The case involved a 30-year-old female complainant who was tricked into entering the residence of two of the accused while out looking for her husband. The complainant was then forced into acts of genital intercourse and fellatio.

The accused were given two-year suspended sentences with a five-year firearm prohibition.

Trial #12

This trial in Court of Queen's Bench was held in March, 1987. The original charges at trial were one count of sexual assault with threats/bodily harm and one count of forcible confinement. Prior to the trial, the charge of forcible confinement was stayed and the accused pleaded guilty to a lesser charge of sexual assault (simple).

The 33-year-old female complainant met the accused in a hotel bar and accepted a ride with him. The accused drove the complainant to a secluded area where he forced her to have sexual intercourse with him. The accused told the police the complainant was a "hooker" who had been paid to have sex with him.

The accused was sentenced to 28 months in jail.

Trial #13

This Assize trial was to be held in May, 1987. The charges were one count each of aggravated sexual assault, threats and choking. However, the trial was dismissed because the complainant could not be located. Police had been looking for her since January, 1987.

Preliminary hearing #1

This preliminary hearing was held in April, 1987. The original charges included four counts of gross indecency, three counts of simple sexual assault and one count of assault. The gross indecency and assault charges were stayed at the hearing.

The complainant's mother and her mother's boyfriend were accused of performing a variety of sexual acts on the complainant including cunnilingus, digital penetration and touching/fondling. They were also accused of engaging in mutual masturbation in front of the complainant. In addition, the mother's boyfriend allegedly tried to choke the complainant.

The complainant's testimony at the hearing was sworn. She was examined for 40 minutes by the crown attorney and 135 minutes by the defence. The defence tried to question the complainant on her sexual history but was kept from doing so by the crown attorney and the judge. The defence counsel did question the complainant on drug/alcohol use, shoplifting, skipping classes and getting kicked out of foster and relative's homes. The defence presented the complainant as a troublemaker who had fabricated the assaults in attempts to break up her mother's relationship. The defence did not call any witnesses.

Both the accused were committed to trial on three counts of sexual assault.

Preliminary Hearing # 2

This preliminary hearing was held in April, 1987. The charges were one count of sexual assault (simple) and one count of sexual intercourse with a female under 14. The accused was the step-father of the complainant, a girl of age nine.

A pediatric gynecologist testified that the complainant had a hymenal opening far larger than normal and also had tears and adhesions that could not be caused by masturbation or infection.

The complainant's testimony was sworn. She was questioned for 20 minutes by the Crown and 25 minutes by the defence. The complainant said that on one occasion when she was six years old, her stepfather came into her bedroom and had sexual intercourse with her.

The defence asked the complainant why she did not tell her mother at the time, if she had ever put her fingers into her vagina, if she had ever had a pelvic examination by a doctor, why she maintained that the assault did not hurt and whether she was mad at the accused because he did not want her to live with the family. The defence did not call any witnesses.

The accused was committed to trial on one count of sexual assault (simple) and one count of sexual intercourse with a female under 14.

Preliminary hearing #3

This preliminary hearing was held in March, 1987. The charges at the hearing were two counts of gross indecency and one count each of aggravated sexual assault, assault with a weapon, possessing a weapon dangerous to the public peace and choking. These charges were not changed.

The case involved a female complainant who alleged she had been assaulted by her common-law spouse. The crown attorney called four witnesses including two police officers, a medical doctor and the complainant.

The complainant's testimony was sworn. She was examined for 45 minutes by the crown attorney and 93 minutes by the defence. She testified that on the evening of the assault, she had gone to a hotel with her cousin. They later went to a party. When she arrived home, the accused, who was intoxicated, beat her extensively, urinated on her and attempted anal intercourse.

The defence questioned the complainant about her drinking that night and why she left her child at home when she knew her husband was drunk. However, in his closing remarks the defence said he accepted the crown attorney had a "prima facie" case.

The accused was committed to trial.

Preliminary Hearing #4

This hearing was held in February, 1987. The charges at the hearing were six counts of aggravated assault and four counts of seizure. These charges were not changed.

The case involved a 22-year-old female complainant who was allegedly assaulted by her former common-law spouse. The crown attorney called a police officer and the complainant as witnesses.

The complainant's testimony was sworn. She was examined for 54 minutes by the crown attorney and 35 minutes by the defence. The complainant testified that she and her two children were forced into a car by the accused who was armed with a pointed screwdriver. While driving, the accused forced the complainant to perform oral sex on him. Later the car was stopped in a secluded area and the complainant was forced to perform oral and genital sex as well as masturbate the accused. Force was used by slapping, punching and puncturing the complainant's skin with the screwdriver. The accused also threatened to kill the complainant and the children who were in the car during all of the assaults.

The defence questioned the complainant on delay in reporting, her use of alcohol or drugs and her injuries.

The accused was committed to trial and bail was denied.

Preliminary hearing #5

This preliminary hearing was held in March, 1987. The charges at the hearing were one count each of sexual assault with threats/bodily harm, gross indecency and robbery. The charges were not changed at the hearing. The crown attorney called three police officers and the complainant as witnesses for the prosecution.

The case involved a female complainant and a male accused. However, because the courtroom was cleared during testimony, the details of this case are unknown.

6.4 Interviews with victims

This summary is based on 16 completed interviews. An additional seven victims were contacted but declined to be interviewed. Four of the victims who declined said they just did not want to talk about it, while three victims did acknowledge that they were angry with the courts because nothing happened to the offender.

6.4.1 Profile

Victim

Gender: All 16 victims were female.

Age: At the time of the assault the majority of victims (N=7) were between 17 and 24 years of age, followed by 25 to 29 (N=5), 30 to 39 (N=3) and 50 (N=1).

Marital Status: One-half of the victims were single (N=8), three were divorced, two were separated, two were living common-law and one was married.

Occupation: Almost one-half of the victims were unemployed (N=7), five were employed in semi-skilled jobs, two were unskilled workers and two were professionals.

Education: The victims' educational level ranged from grade 6 to some time at university. Six victims did not have grade 12, five had obtained grade 12 as their highest level and five had received some form of post-secondary education.

First Language: The majority of victims listed English as their mother tongue (N=14).

Offender

Gender: All of the offenders were male.

Age: Most offenders (N=6) were between 25 and 29 years of age, followed by 19 to 24 (N=4), 30 to 39 (N=3), 40 to 49 (N=2) and 67 (N=1).

Marital Status: The majority of offenders were single (N=9). Three were married, one was separated, one widowed and no information was available for two offenders.

Occupation: Almost one-half of the offenders were unemployed (N=7). This was followed by employed semi-skilled (N=3), unskilled (N=2), professional (N=2), retired (N=1) and no information (N=1).

Education: The offenders' educational level ranged from grade 5 to some university. Seven offenders did not have grade 12, three had obtained grade 12 as their highest level and two had some university. There was no information on four offenders.

Prior Record: Eight offenders had a prior record. In three cases, the record included sexual offences. There was no information on the type of offence for three cases.

Offence

- In eight cases the offender was a stranger, in five cases an acquaintance, and in three cases a friend.
- Sexual fondling was involved in the majority of the cases (N=10). This was followed by genital intercourse (N=5), digital penetration (N=3), ripping off clothes (N=3), oral sex (N=1) and masturbation (N=1).
- Six cases involved violent acts such as hitting, punching and choking.

6.4.2 Victim's evaluation of the criminal justice system

Only three victims felt they had been treated unfairly by the criminal justice system. In one case, the victim was angry because the case was dropped after the preliminary hearing for lack of evidence. In another case, the victim had an unfortunate experience during the preliminary hearing. The crown attorney was ill and fell asleep during court. Furthermore, she did not feel that the offender should have been let out on bail and also felt that his 15-month sentence was far too lenient. In case No. 14, one offender pleaded guilty and received an absolute discharge while the other had his charges stayed after the preliminary hearing. The victim argued that the lawyers and judges let them off because they both came from wealthy backgrounds and had promising futures.

Victim services

Six victims had some contact with Victim Services. Three of them were not happy with the services provided. One complained that she was not given enough detail about the investigation or emotional support. One victim said that her worker did not show up for an appointment before the preliminary hearing and did not accompany her to court as promised. Another felt she needed more ongoing support from the service.

Sexual assault centre

Six victims talked to a counsellor from the sexual assault centre. Five of them were very happy with the services provided. One said she was frustrated by not being able to keep the same counsellor. She disliked having to tell her story over again to a new person every time she needed help.

Additional services

Six victims said there were additional services they would have liked to have had available, i.e., someone to take them to court, to update them on their cases and provide follow-up counselling.

Hospital

Six victims went to the hospital. A sexual assault kit was used on four of them. Five of the six victims were examined by a male doctor. Four victims were pleased with their treatment in the hospital while two were not. One victim said the doctor did not seem to know why she was there and did not ask any questions about the assault. Another was pleased with her initial examination but felt that the public health nurse was rude to her during a return visit.

Police

The police were the first agency called in 14 of the 16 cases. In 10 cases the victim contacted police. Other persons who called the police on the victim's behalf included: the victim's husband, work supervisor, a bus driver, neighbour and, in two cases, a woman from a house where the victim sought help.

In most cases, police were contacted quickly. In nine cases, police were called less than one hour after the assault. None of the reports were delayed for more that one week.

When asked why they decided to report the assault, victims typically answered that they knew what the accused did was wrong. Other reasons included threats by the accused and finding out that he had assaulted another woman.

Interview

Victims were most commonly interviewed once or twice by two male police officers. With only one exception, the victims were glowing in their praise of the police calling them "fantastic," "great," and "wonderful." The victim who said she had problems with the police complained that the police arrived two-and-one-half hours after they were called. They asked her questions that had nothing to do with the assault, i.e., how long she and her husband had been together and whether there had been any fighting between them. They also asked her why she wasn't crying.

Investigation

Ten victims said that they were pleased with the police investigations. Three victims said they had not been informed about the investigation. They did not know when or if the accused had been arrested or what charges had been laid. In the other three cases, the victims felt that police had done a poor job of investigating. In one, for example, the assault had taken place on a bus but the police did not try to interview any potential witnesses.

All offenders were arrested and most (N=11) were arrested either the same day as the assault or one day later. None of the arrests were delayed longer than two weeks. Police laid 11 charges of sexual assault, three of aggravated sexual assault, two of sexual assault with threats/bodily harm and one gross indecency. They also laid the following charges for nonsexual offences: attempted murder; choking to overcome; forcible confinement (2); abduction; breaking and entering (2); and theft (2).

Twelve victims were satisfied with the charges laid. Three victims were not informed about the charges. Only one said she was unhappy about the charges. The offender in this case had an extensive record and the victim thought the charges should have been more severe.

Court process

Court information was available from 12 victims. Five victims appeared in court once, while three made two appearances and one appeared three times. Three victims were still involved in the court process at the time of the interviews.

Only two out of 12 victims said they were not prepared for court by the crown attorney. An additional three said that they were not satisfied with their crown attorney. One found her crown attorney rude and inconsiderate.

Eight victims were able to estimate the length of time they were questioned by the crown attorney at either the trial or the preliminary hearing. Length of time ranged from 15 to 40 minutes, with a mean of 24 minutes. Ten victims were able to estimate the length of time they were questioned by the defence. Here the range of time was much broader: from 15 minutes to four hours, with a mean of 54 minutes. The longest cross-examinations occurred at preliminary hearings rather than at trials.

The majority of victims (N=9) described the experience of testifying in court as "extremely upsetting." The primary explanations for this were having to face the accused and having to relive the assault. The remaining three victims described the experience in neutral terms.

Offenders received sentences in eight cases. Dispositions ranged from a $2,000. fine to 20 years in jail. Four victims were upset by sentences they considered too lenient.

6.4.3 Suggestions and recommendations provided by victims

Fourteen of the 16 victims said they would recommend that future victims report to the police. They typically felt that a crime had been committed and the offender should not be allowed to get away with it. Concern was expressed that other women might be hurt and it was felt that reporting reinforces a victim's feeling of self-worth. Only one victim was aware of the new sexual assault legislation and said that it did not affect her decision to report and follow through with the case.

When asked for recommendations that would make it easier for a victim throughout the investigation and trial, victims suggested that: the offender should not be present in court during the victim's testimony, female lawyers and police should be used, the court process is far too long and slow, and victims need more information on their cases and more support from the criminal justice system.

6.4.4 Summary

Interviews with victims illustrate almost a complete lack of awareness of the sexual assault legislation.

The sample essentially involved stereotypical sexual offences. Compared to an earlier study conducted with victims who had been in contact with the sexual assault centre in Winnipeg[23], there was no change in the type of offences being reported to the police. Half the cases involved strangers and six involved violent acts. Offences were typically reported immediately and none were delayed for more than a week.

Five respondents out of six who spoke to a counsellor from the sexual assault centre were pleased with the services provided and the same can be said for the manner in which they were treated by doctors at the hospital. There was less satisfaction with Victim Services. The attitudes of respondents towards police were very positive and generally their perception of fair treatment by the criminal justice system suggests that at least for some victims, the law's intent is being reflected in the handling of sexual assault crimes.

6.5 Other influences on the processing of sexual assault cases

Crown attorneys all perceived a number of influences on the processing of sexual assault cases were not related to Bill C-127. These include public awareness where sexual assault is now seen as the greatest invasion of privacy.

Only two police officers felt there had been policy or procedural changes around sexual assault that were not the result of Bill C-127. One mentioned the Charter of Rights that makes it more "difficult to keep offenders off the streets. We can't hold them any longer." The other mentioned the increased presence of the Rape Crisis Centre which he felt was not always "a good change."

Three sexual assault counsellors said they had noticed a change in the kinds of offences being reported to the agency over the past few years. One mentioned that there seemed to be more women who have been assaulted more than once. Another remarked that more handicapped (mentally and physically) women were being assaulted. Two mentioned that callers were younger and that these were most often incest victims. Two also said offences seemed to be getting more violent. Most of these violent offences were noted to have been committed by strangers.

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[23] Gunn, Rita. M.A. Thesis. University of Manitoba, 1984. Results reprinted in Gunn, Rita and Candice Minch. "Unofficial and Official Responses to Sexual Assault." Resources for Feminist Research RFR/DRF, 13, 4 (1985-86): 47-49.

Respondents suggested that these changes might be occurring because both clients and counsellors are more aware of the extent and effects of sexual assault. There is more publicity and, therefore, greater knowledge of the offence. Respondents also felt that counsellors have learned to ask more informed questions when clients call on the crisis lines.

Only one counsellor felt the experience of victims in the criminal justice system has become somewhat less harrowing. Speculating on the reason for the slight improvement, the counsellor suggested there is more public sympathy for victims of sexual assault now and, because of the media exposure, victims feel more able to admit to having been assaulted.

7.0 OUTSTANDING PROBLEMS/IMPROVEMENTS SUGGESTED BY PRACTITIONERS

Criminal justice and agency personnel were asked to identify any additional changes they thought were needed to improve the criminal justice system's response to the offence of sexual assault or the treatment of sexual assault victims.

7.1 Problems

Four out of the five sexual assault counsellors mentioned that the accusatory nature of the whole process is the major problem still outstanding with the treatment of sexual assault by the criminal justice system. One said the system continues to make women feel as though they had control over what happened to them. Two respondents said the crime is not looked upon seriously enough and this is evidenced by short sentences.

From the crown attorneys' perspective, the biggest problem with sexual assault cases is that they typically stand or fall on the complainant's evidence alone, and most complainants are so traumatized that they may not want to testify or cannot give their evidence well enough to get a conviction. The trauma to the victim was increased by delays in the criminal justice system (forcing the victim to keep the offence on her or his mind for months or even years) and by the crown attorneys' workload which prevents them from establishing a closer rapport with victims.

The major problem perceived in terms of sexual assault victims was the lack of results from the legal process. The victim goes through complaint, investigation, preliminary hearing and trial, expending her time and emotional energy, and at the end of it all she has nothing to show for it. In addition, it was felt that the criminal justice system loses sight of victims in an effort to protect defendants' rights, and more attention must be focused on the victims.

The majority of victims interviewed described the experience of testifying in court as "extremely upsetting." The primary explanations for this were having to face the accused and having to relive the assault.

7.2 Recommendations

Judges had a number of suggestions to improve the way in which the criminal justice system deals with cases of sexual assault. One judge suggested eliminating of the three levels of the offence. The judge who advocated this change believed that exacerbating factors such as the use of a weapon or bodily harm could simply be reflected in sentencing. Another felt that the existing limitations on sentences should be removed inasmuch as the crime now appears less serious than before the amendments were enacted.

On a procedural level, one judge believed that preliminary inquiries should not be required in minor cases, since they prolong the length of the proceedings. Another procedural suggestion was that sexual assault cases should be pushed through the system faster, because delay is particularly difficult for sexual assault victims.

It was also recommended that there be more specialization within the criminal justice system. Several respondents believed there should be specially-trained crown attorneys, police and doctors to handle sexual assault victims, and another recommended the creation of specialized courts to deal with these cases. It was noted that specialization was not uncommon (e.g., not only do we have judges and courts who specialize exclusively in family and juvenile matters, in Winnipeg there is also a court for cases of spousal abuse), and this approach would permit the development of expertise on the part of the judiciary as well as consistency of treatment for both victims and defendants. A number of judges also noted the need for increased services, including support services for victims and treatment programs for defendants.

Suggestions from crown prosecutors for nonlegislative changes included an increase in personnel for the prosecution, more and better victim services, public education to change social attitudes and increased funding to the police so they could conduct better investigations. It was also suggested that preliminary hearings be simplified so the victim does not have to go through the same ordeal twice.

Suggestions from personnel at the sexual assault centre about additional services the centre should offer were: a more pro-active approach to public education; more group work (e.g., survivors group, other support groups); more training to deal with younger victims; more ongoing counselling; satellite agencies for rural areas; and more political involvement. All respondents believe that these services are limited by insufficient funding.

In terms of further changes needed to implement the spirit of the amendments successfully, a physician and a sexual assault counsellor suggested the formation of a special unit with an integrated approach. This would entail a centre offering all services -- investigation, medical, legal and counselling. Another suggestion was the formation of specialized police and court units to aid victims of sexual assault. It was recommended that all persons dealing with sexual assault victims be educated to do so. One counsellor advised that by informing complainants of their rights, the criminal justice system might be less alienating. Counsellors at the sexual assault centre also referred to a need for massive educational campaigns, and one proposed heavier sentences.

Victims asked for recommendations to make it easier for them throughout the investigation and trial suggested that the offender not be present in court during the victim's testimony. They also suggested the use of female lawyers and police, and said the court process is far too long and slow. Victims felt they needed more information on their cases and more support from the criminal justice system.

8.0 CONCLUSIONS

In both time periods, most victims who reported offences to the police were female and there was almost no difference between 1981-82 and 1984-85. There were substantially more child victims in the post reform period.

Because of the decrease in age in the post reform police data, significantly more of the assaults from that time period involved parents or others known to the victim. The sexual assault centre data do not reflect the decrease in victims' ages, nor the increase in known offenders. This resulted from the manner in which the sexual assault centre sample was selected, screening out many of the child victims.

Although the difference partly reflected the increased number of child sexual assault cases being reported to the police since 1983, even for adult victims there was a decrease in the proportion of "stranger" assaults in the post reform period. This finding suggests that since the law reform, victims are more willing to report assaults that are not stereotypical. It is difficult to separate the social effect from the legal impact, but it is clear that the courts are processing more of these cases.

Almost all offenders reported to police in both time periods were male and juveniles comprised 17.6 per cent of the prereform and 17.9 per cent of the post reform offenders in the police data. Offences typically occurred in the home of the offender or victim. In the police sample these offences increased in the post reform period, an increase consistent with the younger victims in 1984-85. Data from the sexual assault centre indicate a notable increase in offences occurring in vehicles in 1984-85.

There was a decrease in police cases involving intercourse in the post reform period, while touching, fondling and grabbing rose during this period. The decrease in genital intercourse in 1984-85 may be a result of the shift from rape to sexual assault in the Criminal Code, that reduced the emphasis on penetration in defining a sexual assault. It is also consistent with the larger number of child victims in the post reform data, as children were more likely than older persons to be victims of touching, fondling and grabbing.

For police cases, physical force was used less often in the post reform period and a smaller percentage of victims were injured in that group. The decrease in physical force and injury in the post reform period may be due to a relaxation of the corroboration requirement which proved that an offence took place. Hence, more cases would be reported in which the victim suffered no visible injury. In part, it is also due to the increased number of child victims who are less likely to resist an authority figure, particularly a parent or parental surrogate, and who are less likely to be injured. However, when type of resistance was compared separately for adults, there was still a decrease in physical resistance in the 1984-85 sample. Again, there is evidence that there has been an attitudinal change in victims who are reporting more sexual assaults of a nonstereotypical nature since the law was amended.

In spite of fewer injuries, more victims in the post reform than in the prereform period sought medical attention. The fact that considerably more victims received medical attention than were noted as having been injured suggests that the importance of corroborative medical evidence for young victims of sexual assault. This was not found to be significant for adult victims.

Delays in reporting occurred more often in the post reform period. However, the incidence of delayed reports in 1984-85 was significant for children, but not for adults. Although the abrogation of the rules relating to recent complaint was seen by respondents as having an important impact, the police files indicate there has been a more obvious change for sexual assaults on children.

The number of sexual assault cases reported to police is increasing. All respondents interviewed confirmed an increase in cases being reported and processed throughout the system. The crown attorneys said this increase was particularly noticeable for young victims. It was suggested that victims are more willing to report and the law reform has made it easier to lay charges.

There was a significant increase in charges laid in the post reform period. This substantiates the comments from personnel throughout the criminal justice system who said the police are laying charges more readily since the law reform. There was a slight increase in sexual assaults reported by prostitutes in 1984-85. In this time period a number of charges were laid and the crown counsel proceeded with prosecutions. No charges were laid in cases reported by prostitutes in 1981-82. These factors appear to reflect the intended shift in the law reform to emphasize the assaultive, rather than the sexual aspect of the offence. It is clear that there has been a change in the attitudes of those who process sexual assault complaints. Police are more inclined to "found" and investigate these cases and, as well, prosecutions are increasing. Many of the prosecutions were terminated by the complainant, so it is not possible to effectively assess why convictions are not obtained in these cases.

Judges believed that the new law had shifted emphasis from the sexual to the assaultive aspect of the offence, and half the crown attorneys felt that it had. As well as an increase in the number of victims who are prostitutes, there was a slight increase in victims who are married to their assailants. No change was noted with regard to victims and assailants of the same sex. It was also stated there was an increase in less serious sexual assaults.

The total filtering out of reports at the police/crown/court levels accounted for the termination of 87.3 per cent in the prereform period and 70.9 per cent in the post reform period. Although it appears that the attrition rate has decreased considerably in the post reform sample, similar research in Winnipeg before the law reform resulted in almost identical rates. Our recent findings in Lethbridge showed a 24 per cent conviction rate in both pre- and post reform periods. These findings suggest that the 12.7 per cent conviction rate found in the 1981-82 Winnipeg sample is atypical and not consistent with that found in other research.

According to the majority of respondents, the most significant differences between the old law of rape and the new one of sexual assault pertain to the elimination of the requirements of recent complaint, corroboration and penetration. Most police and crown attorneys still considered corroboration and recent complaint to be important, but acknowledged that prosecutions could proceed without it. Two crown attorneys and two judges suggested that the abrogation of recent complaint actually had a negative impact on the prosecution's case. Defence lawyers saw elimination of the requirements of corroboration and penetration as very significant. Respondents generally agreed that evidence of sexual activity does not appear to be routinely introduced or admitted and that judges are taking a very hard line on this type of evidence. Most judges supported all the amendments.

Respondents at all levels of the system concurred that the change from rape to sexual assault has broadened the definition and therefore allows less serious cases to be prosecuted. Rape was a narrowly defined offence, whereas sexual assault encompasses a wide range of behaviours. Most crown attorneys believed that chances for successful prosecution had increased due to the broader nature of sexual assault compared to rape. The majority of defence counsel felt the amendments have made it harder to defend those charged with sexual offences.

Almost all crown attorneys believed that the proportion of cases plea-bargained had increased since the new sexual assault law was passed. Several lawyers agreed that the change from rape to three levels of sexual assault has provided more flexibility in plea-bargaining cases.

Some judges saw changes in sentencing as an important difference between rape and sexual assault provisions. The limitations imposed on maximum sentences may produce lighter sentences than were previously pronounced. Several lawyers felt sexual assault cases are treated more harshly than the former indecent assault cases.

Cases monitored during the study period indicated that victims were being treated more like victims of other types of crimes than has been the case in the past. While this involved rigorous questioning, questions concerning the victim's personal life (particularly those about previous sexual behaviour which characterized rape trials), did not occur.

Respondents provided several suggestions to improve the way in which sexual offences are handled. It was recommended that there be more specialization within the criminal justice system to deal with sexual assault victims. This approach would permit the development of expertise on the part of the judiciary as well as consistency of treatment for both victims and defendants. Also noted was the need for increased services, including support services for victims and treatment programs for defendants. It was also suggested that preliminary hearings should be omitted in less serious cases, or simplified so the victim does not have to go through the same ordeal twice.

Several respondents indicated they believed sexual assault victims' experience in the criminal justice system had improved over the past few years. Some, however, felt it was not necessarily due to the amendments but to changed social attitudes. The attitudes of victims towards the criminal justice system were generally positive and suggest that at least for some victims, the law's intent is being reflected in the handling of sexual assault crimes.

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